

ORIGINAL

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

ALLFIRST BANK

Plaintiff,

v.

JOHN M. ORTENZIO

Defendant.

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CASE NO.: 1:01-CV-786

Judge Rambo

FILED
MAY 14 2002
PER MARY E. HANCOCK, CLERK

**PLAINTIFF'S OPPOSITION TO DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT**

Plaintiff, Allfirst Bank, by its undersigned attorneys, opposes the motion for summary judgment of Defendant, John M. Ortenzio, upon the following grounds, which are more particularly set forth in the accompanying memorandum in support of this opposition.

1. Defendant has ignored the material facts of the case and has instead posited facts which are not material, much less relevant, to the claims Plaintiff has raised in the complaint.

2. Plaintiff has filed its own motion for summary judgment which sets forth the material facts of the case which cannot be genuinely disputed and which demonstrates that Plaintiff is entitled to judgment as a matter of law pursuant to *F. R. Civ. P. 56*.

In support of this opposition, Allfirst submits the following:

- a. Response to Defendant's statement of material facts pursuant to Local Rule 56.
- b. The following Exhibits.

Documents

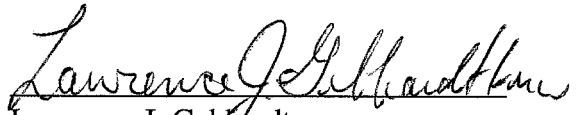
Exhibit A - Commitment Letter dated November 5, 1999

Exhibit B - Commitment Letter dated March 23, 1999

- Exhibit C - Film Promissory Note dated March 24, 1999
- Exhibit D - Commercial Loan Note dated November 8, 1999
- Exhibit E - Suretyship
- Exhibit F - CCI Financial Statement 1998.
- Exhibit G - CCI Internal Financial Statement 1999
- Exhibit H - Ortenzio Personal Financial Statement
- Exhibit I - Default Letter
- Exhibit J - Accumulated Transaction List
- Exhibit K - Correspondence of John Ortenzio dated February 22, 2000
- Exhibit L - Affidavit of Gerard L. Elias.

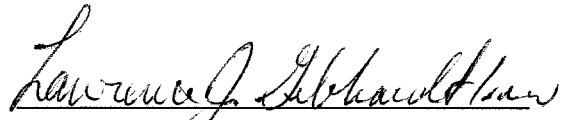
Deposition Excerpts

- Exhibit M - John Ortenzio
- Exhibit N - Craig Schwartz
- Exhibit O - Sheri Phillips
- Exhibit P - Gerard Elias


Lawrence J. Gebhardt
Ramsay M. Whitworth
GEBHARDT & SMITH, LLP
401 East Pratt Street
Baltimore, Maryland 21202
(410) 752-5830
Counsel for Plaintiff, Allfirst Bank

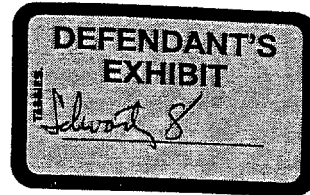
CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of May, 2002, a copy of Plaintiff's Opposition to Defendant's Motion for Summary Judgment was sent by Federal Express to: Edward I. Swichar, Esquire and Robert A. Burke, Esquire, BLANK ROME COMISKY & MCCAULEY LLP, One Logan Square, Philadelphia, PA 19103, *Attorneys for Defendant.*


Lawrence J. Gebhardt



allfirst



Allfirst Bank
P.O. Box 2961
Harrisburg, PA 17105-2961

November 5, 1999

Mr. John M. Ortenzio, President
CCI Construction Co., Inc.
P.O. Box 8800
Mechanicsburg, PA 17055

Dear John:

I am pleased to inform you that Allfirst Bank (hereinafter "Bank") has approved a \$1,200,000 partially secured line of credit to CCI Construction Co., Inc. (hereinafter "Borrower") as follows:

Principal Amount of Line:	\$1,200,000.00
Interest Rate:	Bank's Base Rate as in effect from time to time, minus 1/2%.
Repayment:	Interest payable monthly, principal on demand.
Use of Proceeds:	Finance work in progress and accounts receivable.
Collateral:	Specific equipment financed, including titled vehicles

Borrowings under Loan will bear interest at an annual rate equal to the Bank's Base Rate as in effect from time to time, minus one-half percent. This interest will change when and as the Bank's Base Rate changes. Interest will be calculated on the basis of the actual number of days in the current calendar year divided by 360. Interest will be payable monthly upon submission of the Bank's notice therefor.

Borrowings under the Loan will be payable on demand. If no demand is made, the Loan will expire and all borrowings will be due and payable, together with interest thereon, on March 31, 2000.

Borrowings under the Loan shall be limited to 80% of the Borrower's qualified accounts receivable which are less than 90 days past due, excluding retainages.

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CCI Construction Co., Inc.
November 5, 1999
Page Two

The Loan will be supported by the personal Suretyship of John M. Ortenzio limited to \$1,200,000.

The Borrower shall furnish the Bank with financial reporting as follows:

1. Annual CPA- audited financial statements of CCI Construction Co., Inc.
2. Quarterly work in process reports for CCI Construction, Co., Inc.
3. Quarterly Company prepared financial statements of CCI Construction Co., Inc.
4. Monthly borrowers certification with monthly accounts receivable aging and listing.
5. Annual personal financial statement of John M. Ortenzio.

The Borrower shall maintain a primary business deposit relationship with the Bank.

The Borrower will not create, assume or permit to exist, any mortgage, pledge, lien or encumbrance of or upon, or security interest in any of Borrower's property or assets now owned or hereafter acquired in favor of the Bank, other than purchase money, without prior written consent of the Bank.

The availability to the Loan is contingent upon the Borrower and the Bank entering into mutually acceptable loan documentation setting forth the terms and conditions contained herein and such other terms and conditions, covenants, warranties and representations as may be required by the Bank and be mutually acceptable to the Borrower and the Bank. All terms and conditions contained herein shall survive the execution of such loan documentation.

The commitment is contingent upon the right of the Bank at any time hereafter and from time to time to review the commitment, to adjust terms and conditions, or to discontinue the commitment should the Bank in the reasonable exercise of its sole business discretion deem it necessary to do so.

CCI Construction Co., Inc.
November 5, 1999
Page Three

Please indicate the acceptability of these terms and conditions by dating, signing, and returning an executed copy of this letter no later than November 19, 1999.

Very truly yours,

Craig J. Schwartz
Vice President

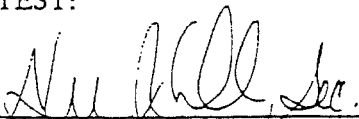
CJS/mas

Enclosure

ACKNOWLEDGED AND ACCEPTED THIS DAY OF , 1999.

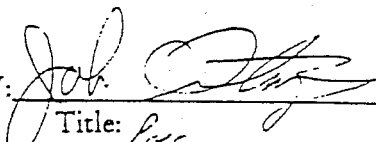
ATTEST:

BY:


Title: Sec/Treas

CCI CONSTRUCTION CO., INC.

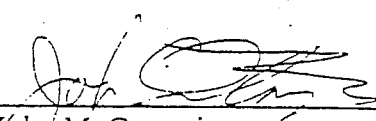
BY:

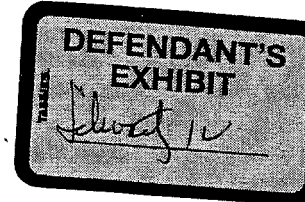

Title: Pres

WITNESS:



SURETY:


John M. Ortenzio



FIRST NATIONAL BANK OF MARYLAND

A Division of FMB Bank

Regional Corporate Group, Mail Code 133-02-01
3045 Market Street, Camp Hill, PA 17011-4530
Telephone: 717 612-5026 Facsimile: 717 612-5027

March 23, 1999

Ms. Sheri Phillips
Chief Financial Officer
CCI Construction Co., Inc.
P.O. Box 1129
Mechanicsburg, PA 17055

Dear Ms. Phillips:

I am pleased to advise you that The First National Bank of Maryland, a Division of FMB Bank (hereafter "Bank") has increased and reaffirmed an unsecured line of credit (hereafter "Loan") to CCI Construction Co., Inc. (hereafter "Borrower") as follows:

Principal Amount of Loan:	\$4,000,000.00
Interest Rate:	Bank's Base Rate as in effect from time to time, minus ½%
Repayment Schedule:	Interest monthly, principal on demand
Use of Proceeds:	Finance work in process and accounts receivable
Collateral:	Unsecured

Borrowings under the Loan will bear interest at an annual rate equal to the Bank's Base Rate as in effect from time to time, minus one-half percent (-1/2%). This interest rate will change when and as the Bank's Base Rate changes. Interest shall be calculated on the basis of the actual number of days in the current calendar year divided by 360. Interest will be payable monthly upon submission of the Bank's statement therefor.

Borrowings under the Loan will be payable on demand. If no demand is made, the Loan will expire and all borrowings will be due and payable, together with interest thereon, on April 30, 2000.

Ms. Sheri Phillips
CCI Construction Co., Inc.
March 23, 1999
Page Two

Terms and Conditions:

1. Annual CPA - audited financial statements of CCI Construction Co., Inc.
2. Quarterly work in process reports for CCI Construction Co., Inc.
3. Quarterly Company prepared financial statements of CCI Construction Co., Inc.
4. Monthly borrowers certification with monthly accounts receivable aging and listing.
5. Primary business deposits of CCI Construction Co., Inc. to be maintained at The First National Bank of Maryland, a Division of FMB Bank.
6. Negative pledge of assets other than purchase money.
7. The Company shall maintain a minimum tangible net worth of \$4,500,000.00 measured at year end.
8. Advances not to exceed 80% of qualified accounts receivable less than 90 days past dues, excluding retainages.

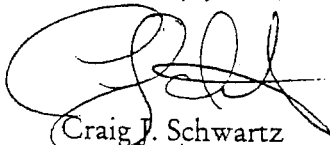
Availability of the Loan is contingent upon the Borrower and the Bank entering into mutually acceptable loan documentation setting forth terms and conditions stated herein and such other terms and conditions, covenants, warranties and representations as may be required by the Bank and be mutually acceptable to the Borrower and the Bank. All terms and conditions contained herein shall survive the execution of such loan documentation.

This commitment is contingent upon the right of the Bank at any time hereafter and from time to time to review the commitment, to adjust terms and conditions, or to discontinue the commitment should the Bank in a reasonable exercise of its sole business discretion deem it necessary to do so.

Ms. Sheri Phillips
CCI Construction Co., Inc.
March 23, 1999
Page Three

Please acknowledge your concurrence with these terms and conditions by signing, dating and returning the enclosed copy of this letter to the Bank on or before March 31, 1999.

Very truly yours,

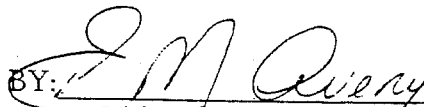

Craig J. Schwartz
Vice President

CJS/jkp


Enclosure

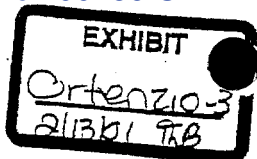
ACKNOWLEDGED AND ACCEPTED THIS 24th DAY OF March, 1999.

ATTEST:

BY: 
Title: ASSISTANT SECRETARY

CCI CONSTRUCTION CO., INC.

BY: 
Title: CFO



* a division of
FMB Bank

FILM/CASH SOLUTIONS PROMISSORY NOTE
(PENNSYLVANIA)

Instructions to Loan Officer: Use for (a) loans to corporations, regardless of amount, and (b) loans to non-corporate borrowers when the only purpose of any such loan is business and the principal amount of such loan exceeds \$50,000.

\$ 4,000,000.00 Mechanicsburg, PA March 24, 1999
(City) (State)

FOR VALUE RECEIVED, the undersigned ("Borrower") promises to pay on demand to the order of THE FIRST NATIONAL BANK OF MARYLAND* ("Bank"), at any of Bank's offices, or at such other place as the holder of this Promissory Note may from time to time designate, the principal sum of FOUR MILLION and 00 /100 Dollars (\$ 4,000,000.00), or such other amount as may be advanced from time to time to Borrower, together with interest thereon at the rate or rates hereafter specified and any and all other sums which may be owing to Bank by Borrower pursuant to this Promissory Note. The following terms, as well as the applicable terms on Exhibit A, attached hereto and incorporated herein by reference, shall apply to this Promissory Note.

1. DEFINITIONS. The following terms have the following definitions:

- A. "Account" means the commercial checking account maintained by Borrower with Bank and designated as Account No. 28864514, together with any replacement account therefor.
- B. "Business Day" means any day other than Saturday, Sunday or other day on which commercial banks in the Commonwealth of Pennsylvania are authorized to close.
- C. "Incremental Advance Amount" means the amount indicated on Exhibit A as the Incremental Advance Amount. Each Loan must be an integral multiple of such amount.
- D. "Initial Excess Balance" means, for any Business Day, the amount by which the collected balance in the Account at the end of such Business Day after posting all credits to the Account (subject to funds availability), but prior to posting any debits to the Account, exceeds the Target Balance.
- E. "Line Availability" means, for any Business Day, an amount equal to the difference obtained by subtracting the aggregate principal balance outstanding under all Loans from the Maximum Line Amount.
- F. "Loan" means an advance of monies from Bank to Borrower pursuant to the terms of this Promissory Note; and the term "Loans" means more than one Loan.
- G. "Maximum Advance Amount" means an amount equal to the highest integral multiple of the Incremental Advance Amount which does not exceed the Line Availability.
- H. "Maximum Line Amount" means the amount indicated on Exhibit A as the Maximum Line Amount, which amount is the maximum aggregate principal balance of the Loans which may be outstanding at any one time.
- I. "Minimum Loan Advance" means the amount indicated on Exhibit A as the Minimum Loan Advance, which amount is the minimum principal amount of each Loan.
- J. "Presented Items" means, for any Business Day, the aggregate amount of debits which have been presented for payment against the Account.
- K. "Prime Rate" means a fluctuating annual rate of interest equal to the greater of: (i) that rate announced from time to time by Bank as its "prime rate;" or (ii) the rate obtained by adding one percent (1%) to the average rate, rounded to the nearest one-tenth of one percent, for three month maturity dealer placed commercial paper for the week most recently reported in the Federal Reserve Statistical Release No. H.15(519) entitled "Selected Interest Rates" or any succeeding publication.
- L. "Target Balance" means the amount indicated on Exhibit A as the Target Balance, which amount is the minimum collected balance that must be maintained in the Account.

2. PROCEDURES FOR LOANS. All Loans shall be made in the form of a transfer of funds into the Account in accordance with the procedures set forth in this paragraph. Borrower hereby irrevocably authorizes Bank to make Loans in accordance with the procedures set forth herein. At the end of each Business Day, Bank shall calculate the Initial Excess Balance and the aggregate amount of the Presented Items. In the event the Initial Excess Balance is less than the aggregate amount of the Presented Items, Bank shall make a Loan by transferring funds into the Account in an amount equal to the amount, which when added to the Initial Excess Balance, would be equal to the aggregate amount of the Presented Items; provided, however, that: (a) the principal amount of the Loan shall not be less than the Minimum Loan Advance; (b) the principal amount of the Loan must be an integral multiple of the Incremental Advance Amount, and therefore, if it would not otherwise be an integral multiple of the Incremental Advance Amount, the amount of the Loan will be rounded up to the next higher integral multiple of the Incremental Advance Amount unless there is insufficient Line Availability in which case the Loan amount will be the Maximum Advance Amount; and (c) the principal amount of the Loan shall not exceed the Maximum Advance Amount. If at any time the amount of the Initial Excess Balance is less than the amount of the Presented Items by an amount greater than the Maximum Advance Amount, Bank shall: (i) make a Loan by transferring funds into the Account in an amount equal to the Maximum Advance Amount; and (ii) determine, in its sole discretion, which Presented Items will be paid, and which Presented Items will not be paid. In the event the Initial Excess Balance is greater than the amount of the Presented Items, Bank shall post and pay all of the Presented Items. If, following Bank's posting and paying of all of the Presented Items, there remains a balance in the Account in excess of the Target Balance, Bank is hereby irrevocably authorized to debit the Account in an amount up to the portion of the balance in the Account which exceeds the Target Balance, and apply such sums to the outstanding balance of the Loans. Bank agrees to make such debit of the Account to repay sums outstanding under the Loans as of the end of each Business Day; provided, however, that in the event the option labeled "Cash Solutions Protection" is marked on Exhibit A attached hereto, Bank shall not automatically debit the Account to make payments on the Loans, but may do so, in its sole and absolute discretion.

3. TERMINATION. The procedure for making Loans, and the obligation of Bank to provide Loans, as set forth in this Promissory Note, may be terminated by Borrower upon ten (10) days prior written notice to Bank and may be terminated by Bank upon thirty (30) days prior written notice to Borrower. Upon termination, no further Loans shall be made under this Promissory Note, but all other terms of this Promissory Note (including, but not limited to, the holder's right to demand payment at any time and for any reason) shall remain in full force and effect.

4. INTEREST. From the date hereof until all sums due hereunder, including principal, interest, charges, fees and expenses are paid in full, the principal amount outstanding from time to time pursuant to this Promissory Note shall bear interest as follows (Check One):

☐ Fluctuating Rate. At a fluctuating rate equal to _____ % per annum above the Prime Rate in effect from time to time. Bank at its discretion may charge a lesser rate from time to time. Interest on the principal amount outstanding shall be adjusted daily, with the rate for each day being adjusted to reflect the Prime Rate in effect at the close of business on that day. Bank makes loans at interest rates at, above and below the Prime Rate.

☒ Other (describe): Interest shall accrue at a rate per annum equal to the Bank's Base Rate minus 1/2% as in effect from time to time.

5. CALCULATION OF INTEREST. Interest shall be calculated on the basis of a three hundred sixty (360) days per year factor applied to the actual days on which there exists an unpaid balance hereunder.

6. REPAYMENT. Borrower shall make payments of principal and interest in accordance with the following terms:

(a) Principal: ALL SUMS OUTSTANDING UNDER THIS PROMISSORY NOTE, INCLUDING THE PRINCIPAL AMOUNT OF ALL OF THE LOANS, ARE IMMEDIATELY DUE IN FULL UPON THE FIRST TO OCCUR OF: (I) THE DEMAND OF THE HOLDER OF THIS PROMISSORY NOTE, WHICH DEMAND MAY BE MADE AT ANY TIME AND FOR ANY REASON, IN THE SOLE AND ABSOLUTE DISCRETION OF THE HOLDER OF THIS PROMISSORY NOTE; OR (II) THE OCCURRENCE OF ANY DEFAULT UNDER THE TERMS OF THIS PROMISSORY NOTE with 30 days written notice

(b) Interest: Borrower shall make payments of all accrued and unpaid interest on the 31st day of each successive month, beginning on March 31, 1999 and continuing until all sums outstanding hereunder are paid in full.

Borrower may prepay this Promissory Note in whole or in part at any time or from time to time without premium or additional interest.

7. LATE PAYMENT CHARGE. If any payment due hereunder (including any payment in whole or in part of principal) is not received by the holder within fifteen (15) calendar days after its due date, Borrower shall pay a late payment charge equal to five percent (5%) of the amount then due.

8. APPLICATION OF PAYMENTS. All payments made pursuant to this Promissory Note shall be applied first to accrued and unpaid interest, then to unpaid expenses and charges payable hereunder, and then to principal, or in such other order or proportion as the holder, in the holder's sole discretion, may elect from time to time.

9. ~~SECURITY.~~ See below - Unsecured Sums due under this Promissory Note are secured by, and Borrower grants to Bank a security interest in, all deposits and property of Borrower now or at any time hereafter in the possession of or on deposit with Bank whether as custodian or depository or in any other capacity. Bank shall have the right to set-off and apply against the obligations of Borrower to Bank evidenced by this Promissory Note any sums of Borrower at any time on deposit with Bank whether such deposits are special, time or demand, provisional or final. In addition, this Promissory Note is secured by any property described as collateral in any security agreement, pledge agreement or other document previously, simultaneously, or hereafter entered into by Borrower in connection with any obligation or liability of Borrower to Bank or any corporate affiliate of Bank, such other security documents include but are not limited to the following:

☐ Security Agreement(s)

☐ Real estate mortgage or deed of trust on property known as _____ located in _____ County/City, State of _____

☒ Other (describe): Unsecured

This Promissory Note specifically incorporates by reference, as if fully set forth herein, all of the language and provisions of the security documents described generally or specifically above.

10. REPRESENTATIONS AND WARRANTIES. Borrower (and if more than one Borrower, each Borrower) represents and warrants to Bank that the following statements are true, correct and complete as of the date hereof, and as of the date each Loan is made hereunder: (a) it is duly organized and in good standing under the laws of the state in which it is organized; (b) it has the full power and authority to execute, deliver and perform this Promissory Note; (c) neither such execution, delivery and performance, nor compliance by it with the provisions of this Promissory Note will conflict with or result in a breach or violation of its organizational documents, or any judgment, order, regulation, ruling or law to which it is subject or any contract or agreement to which it is a party or to which any of its assets and properties are subject; (d) this Promissory Note constitutes its legal, valid and binding obligation enforceable in accordance with its terms; (e) there is no litigation or proceeding pending or, to the knowledge of its representative signing this Promissory Note on its behalf, threatened against or affecting it which might materially adversely affect its business, financial condition or operations or its ability to perform and comply with this Promissory Note; (f) all financial statements and information furnished or to be furnished to Bank hereunder have been and will be prepared in accordance with generally accepted accounting principles and fairly present its financial condition as of the dates thereof and the results of its operations for the period covered thereby; (g) it is not in violation of any applicable federal, state or local law, statute, rule, regulation or ordinance and has not received any notice nor is the subject of any investigation to the effect that its operations are not in material compliance with any such law, statute, rule, regulation or ordinance, including, without limitation, applicable environmental, health and safety laws and regulations; (h) since September 2, 1974, no pension, employee benefit, multi-employer, profit sharing, savings, stock bonus or other deferred compensation plan ("Plan") maintained by it or any trade or business group with which it is affiliated subject to the requirements of the Employee Retirement Income Security Act of 1974 ("ERISA") has been terminated, no lien exists against Borrower in favor of the Pension Benefit Guaranty Corporation ("PBGC"), and no "reportable event" (as such term is defined in ERISA) has occurred with respect to any such Plan, and Borrower has not incurred any "accumulated funding deficiency" within the meaning of ERISA or any liability to the PBGC in connection with any Plan; and (i) no information, exhibit, report, statement, certificate or document furnished by Borrower or any other person to Bank in connection with the Loans, this Promissory Note or the negotiation thereof contains any material

misstatement of fact or ~~to~~ to state a material fact or any fact necessary to make statements contained herein or therein not misleading.

11. **DEFAULT.** Any of the following will be a default under this Promissory Note: (a) failure to pay any principal, expense, fee, charge or interest when due, or failure to perform any other obligations hereunder; (b) a default by any Borrower upon any of the existing or future obligations of any Borrower to Bank; (c) a default by any guarantor or other person other than Borrower that is now or hereafter liable upon or in connection with any of the obligations of any Borrower to Bank or that has granted any lien or security interest to or for the benefit of Bank to secure any of the obligations of any Borrower to Bank ("Other Obligor"), upon any of the existing or future obligations of any Other Obligor to Bank; (d) a default in any other agreement, instrument or document between any Borrower or Other Obligor and Bank, or any corporate affiliate of Bank, including, without limitation, any security document referred to above, whether previously, simultaneously, or hereafter entered into; (e) ~~a material adverse change in the financial condition of any Borrower or Other Obligor from that expressed in the financial statement most recently submitted to Bank prior to the date of this Promissory Note, as determined in good faith by Bank in its sole discretion;~~ (f) institution of bankruptcy, insolvency, reorganization or receivership proceedings by or against any Borrower or Other Obligor in any state or federal court; (g) the appointment of a receiver, assignee, custodian, trustee or similar official under any federal or state insolvency or creditors' rights law for any property of any Borrower or Other Obligor; (h) ~~failure of any Borrower or Other Obligor to furnish to Bank such collateral or additional collateral as Bank may in good faith request;~~ (i) any warranty, representation, or statement to Bank by or on behalf of any Borrower or Other Obligor proving to have been incorrect in any material respect when made or furnished; (j) the occurrence of any event which is, or would be with the passage of time or the giving of notice or both, a default under any indebtedness of any Borrower or Other Obligor to any person other than Bank; (k) any material loss, theft or substantial damage, which is not fully insured, to any of the assets of any Borrower or Other Obligor or the sale, transfer, lease, encumbrance or other disposition of all or any material part of the assets of any Borrower or Other Obligor other than in the ordinary course of business of Borrower or Other Obligor; (l) the entry of any final judgment against any Borrower or Other Obligor for the payment of money in excess of \$5,000.00; (m) the levy upon or attachment of any assets of any Borrower or Other Obligor; (n) ~~the recording of any federal, state or local tax lien against any Borrower or Other Obligor;~~ (o) a change of ownership or dissolution, merger, consolidation, liquidation or reorganization of any Borrower or Other Obligor which is a corporation, partnership or other legal entity; (p) ~~the death of any Borrower or Other Obligor who is a natural person;~~ (q) failure of any Borrower or Other Obligor to furnish to Bank such financial information as Bank may require from time to time, including, but not limited to, such financial statements as Bank may require; (r) failure of any Borrower or Other Obligor to comply with all laws, rules, regulations and decrees to which such Borrower or Other Obligor may be subject, the violation of which may have a material adverse effect on the business operation or financial condition of such Borrower or Other Obligor; (s) ~~the acquisition by a Borrower of all or substantially all of the assets, properties or equity interest of any other person or entity without Bank's prior written consent;~~ (t) failure of any Borrower to maintain its existence in good standing in the jurisdiction of its organization; (u) any of the licenses or permits which are necessary to the conduct of any Borrower's business as now conducted is not maintained in full force and effect; or (v) ~~the determination in good faith by Bank in its sole discretion that the ability of any Borrower or Other Obligor to pay or perform any of their respective obligations to Bank is impaired for any reason.~~

12. **REMEDIES.** Upon a default, in addition to all other rights and remedies available to the holder of this Promissory Note under any document or agreement between Borrower and Bank or under applicable law, the holder of this Promissory Note, in the holder's sole discretion and without notice or demand, may raise the rate of interest accruing on the unpaid principal balance outstanding under this Promissory Note by two (2) percentage points above the rate of interest otherwise applicable. The Bank shall have no further obligation to provide any Loans to Borrower following: (a) a demand by Bank for payment hereunder; or (b) a default under this Promissory Note. Borrower agrees that a default under this Promissory Note is a default by Borrower under all other liabilities and obligations of Borrower to the holder, and that the holder shall have the right to declare immediately due and payable all liabilities and obligations owed by Borrower to the holder of this Promissory Note.

13. **CONFESSION OF JUDGMENT.** Borrower irrevocably and unconditionally authorizes any attorney admitted to practice before any court of record in the United States to appear on behalf of Borrower in any court in one or more proceedings, or before any clerk thereof or prothonotary or other court official, and appear for, to confess and enter judgment against Borrower, at any time, whether before or after the occurrence of any default hereunder, with or without averment of default, with or without complaint filed, and without prior notice or opportunity of Borrower for prior hearing, in favor of the holder of this Promissory Note in the full amount outstanding on this Promissory Note (including principal, accrued interest and any and all charges, fees and expenses) plus court costs, plus attorneys' fees equal to fifteen percent (15%) of the unpaid balance of principal, interest, charges, and other sums outstanding hereunder, with release of all errors and without right of appeal. Borrower waives the benefit of any and every statute, ordinance, or rule of court which may be lawfully waived conferring upon Borrower any right or privilege of exemption, homestead rights, appraisement, stay of execution, or supplementary proceedings, or other relief from the enforcement or immediate enforcement of a judgment or related proceedings on a judgment. (To the extent prohibited by applicable law, any judgment obtained by confession shall not constitute a lien on any real property located in Pennsylvania which is the residence of the Borrower.) The authority and power to appear for and enter judgment against Borrower shall not be exhausted by one or more exercises thereof, or by any imperfect exercise thereof, and shall not be extinguished by any judgment entered pursuant thereto; such authority and power may be exercised on one or more occasions from time to time, in the same or different jurisdictions, as often as the holder shall deem necessary or advisable. BORROWER HEREBY ACKNOWLEDGES THAT THE CONFESSION OF JUDGMENT PROVISIONS HEREIN CONTAINED WHICH AFFECT AND WAIVE CERTAIN LEGAL RIGHTS OF BORROWER HAVE BEEN READ, UNDERSTOOD AND VOLUNTARILY AGREED TO BY BORROWER.

14. **EXPENSES.** Borrower shall pay all costs and expenses, including attorneys' fees (to the extent not prohibited by law) incident to the making of the Loans. Borrower shall pay all costs and expenses incurred by Bank in collecting sums due under this Promissory Note, including without limitation the costs of any lien, judgment or other record searches, appraisals, travel expenses and the like. In addition, if this Promissory Note is referred to an attorney for collection, whether or not judgment has been confessed or suit has been filed, Borrower shall pay all of the holder's costs, fees (including, but not limited to, the holder's attorneys' fees, charges and expenses) and all other expenses resulting from such referral.

15. **AMENDMENTS.** The fees and charges required to be paid by Borrower in connection with the Loans may, at any time and from time to time, be amended by Bank, upon prior written notice thereof to Borrower and otherwise in compliance with applicable law. Any such amendment shall become effective on the first day of the month in which Borrower obtains a Loan, after the date specified in the notice of amendment (which date shall be not less than thirty (30) days from the date

the notice was mailed to Borrower, or upon such other date as may be required in accordance with applicable law. If Borrower obtains a Loan after the date specified in the notice, the changes in the fees and charges described in the amendment shall apply to all outstanding unpaid indebtedness and obligations under this Promissory Note, whether incurred or arising prior to, upon, or after the effective date of the amendment.

16. **NEGOTIABLE INSTRUMENT.** Borrower agrees that this Promissory Note shall be deemed to be a negotiable instrument, even though this Promissory Note may not qualify under applicable law, absent this paragraph, as a negotiable instrument.

17. **WAIVERS.** Borrower, and all parties to this Promissory Note, whether maker, indorser, or guarantor, waive presentment, demand, notice of dishonor and protest.

18. **EXTENSIONS OF MATURITY.** All parties to this Promissory Note, whether maker, indorser, or guarantor, agree that the maturity of this Promissory Note, or any payment due hereunder, may be extended at any time or from time to time without releasing, discharging, or affecting the liability of such party.

19. **NOTICES.** Any notice or demand required or permitted by or in connection with this Promissory Note, without implying the obligation to provide any notice or demand, shall be in writing at the address set forth below or to such other address as may be hereafter specified by written notice to Bank by Borrower. Any such notice or demand shall be deemed to be effective as of the date of hand delivery or facsimile transmission, one (1) day after dispatch if sent by telegram, mailgram, overnight delivery, express mail or federal express, or three (3) days after mailing if sent by first class mail with postage prepaid.

20. **ASSIGNABILITY.** This Promissory Note may be assigned by Bank or any holder at any time.

21. **JOINT AND SEVERAL LIABILITY.** If more than one person or entity is executing this Promissory Note as Borrower, all liabilities under this Promissory Note shall be joint and several with respect to each of such persons or entities.

22. **BINDING NATURE.** This Promissory Note shall inure to the benefit of and be enforceable by Bank and Bank's successors and assigns and any other person to whom Bank may grant an interest in Borrower's obligations to Bank, and shall be binding and enforceable against Borrower and Borrower's personal representatives, successors and assigns.

23. **INVALIDITY OF ANY PART.** If any provision or part of any provision of this Promissory Note shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Promissory Note and this Promissory Note shall be construed as if such invalid, illegal or unenforceable provision or part thereof had never been contained herein, but only to the extent of its invalidity, illegality or unenforceability.

24. **MAXIMUM RATE OF INTEREST; COMMERCIAL LOAN.** Notwithstanding any provision of this Promissory Note to the contrary, Borrower shall not be obligated to pay interest hereunder in excess of the maximum rate of interest permitted by the laws of any state determined to govern this Promissory Note or the laws of the United States applicable to loans in such state. If any provision of this Promissory Note shall ever be construed to require the payment of any amount of interest in excess of that permitted by applicable law, then the interest to be paid hereunder shall be held subject to reduction to the amount allowed under applicable law, and any sums paid in excess of the interest rate allowed by law shall be applied in reduction of the principal balance outstanding under this Promissory Note. Borrower acknowledges that it has been contemplated at all times by Borrower that the laws of the Commonwealth of Pennsylvania will govern the maximum rate of interest that it is permissible for the holder of this Promissory Note to charge Borrower under this Promissory Note. Borrower warrants that this Promissory Note evidences a loan made solely to acquire or carry on a business or commercial enterprise.

25. **CHOICE OF LAW; CONSENT TO VENUE AND JURISDICTION.** This Promissory Note shall be governed, construed and interpreted in accordance with the laws of the Commonwealth of Pennsylvania, even if the Commonwealth of Pennsylvania rules governing conflicts of laws would otherwise require that the laws of another jurisdiction govern this Promissory Note. Borrower consents to the jurisdiction and venue of the courts of any city or county in the Commonwealth of Pennsylvania or to the jurisdiction and venue of the United States District Court for the Middle District of Pennsylvania in any action or judicial proceeding brought to enforce, construe or interpret this Promissory Note.

26. **UNCONDITIONAL OBLIGATIONS.** Borrower's obligations under this Promissory Note shall be the absolute and unconditional duties and obligations of Borrower and shall be independent of any rights of set-off, recoupment or counterclaim which Borrower might otherwise have against the holder of this Promissory Note, and Borrower shall pay absolutely the payments of principal, interest, fees, charges and expenses required hereunder, free of any deductions and without abatement, diminution or set-off.

27. **ACTIONS AGAINST BANK.** Any action brought by Borrower against Bank which is based, directly or indirectly, or in whole or in part, upon this Promissory Note or any matter related to this Promissory Note shall be brought only in the courts of the Commonwealth of Pennsylvania.

28. **WAIVER OF JURY TRIAL.** Borrower (by execution of this Promissory Note) and Bank (by acceptance of this Promissory Note) agree that any suit, action, or proceeding, whether claim or counterclaim, brought or instituted by Borrower, Bank, or any successor or assign of Borrower or Bank on or with respect to this Promissory Note or which in any way relates, directly or indirectly, to the obligations of Borrower to Bank under this Promissory Note, or the dealings of the parties with respect thereto, shall be tried only by a court and not by a jury. **BORROWER AND BANK HEREBY EXPRESSLY WAIVE ANY RIGHT TO A TRIAL BY JURY IN ANY SUCH SUIT, ACTION, OR PROCEEDING.** Borrower and Bank acknowledge and agree that this provision is a specific and material aspect of the agreement between the parties and that Bank would not enter into the transaction with Borrower if this provision were not a part of their agreement.

[SIGNATURES CONTAINED ON NEXT PAGE]

IN WITNESS WHEREOF, and intending to be legally bound hereby, the undersigned executes this Promissory Note under seal, as Borrower, as of the date first written above.

WITNESS/ATTEST*:

CCI Construction Co., Inc
(Name of Organization)

7500 Old Gettysburg Rd
(Street Address)

Camp Hill, Pa 17011
(City-State-Zip)

717-909-4224 717-909-4600
(Telephone) (Facsimile)

E. M. Avery

E. M. AVERY ASSISTANT SECRETARY
(Print Name)

By: [Signature] CFO (SEAL)
(Authorized Signature)

Sheri Phillips, CFO
(Print Name and Title)

(Print Name)

By: _____ (SEAL)
(Authorized Signature)

(Print Name and Title)

*NOTE: Attestation by a corporate officer of another corporate officer's capacity to sign is required in all corporate transactions.

If Borrower is an individual he or she should sign below:

WITNESS:

(Print Name)

(SEAL)
(Print Name)

(Street Address)

(City-State-Zip)

(Telephone) (Facsimile)

EXHIBIT A
FILM/Cash Solutions Promissory Note

Account Number: 28864514

Borrower: CCI Construction Co., Inc.

The terms and provisions of the option checked below are incorporated in and made a part of the FILM/Cash Solutions Promissory Note executed by Borrower to which this Exhibit A is attached:

☒ **FILM LOAN OPTION** - The following terms apply to this option:

- i) Maximum Line Amount - \$4,000,000.00
- ii) Minimum Loan Advance - \$0.01
- iii) Incremental Advance Amount - \$1.00
- iv) Target Balance - \$ 0
- v) Fees - 0

☐ **CASH SOLUTIONS PROTECTION OPTION** - The following terms apply to this option:

- i) Maximum Line Amount - _____
- ii) Minimum Loan Advance - \$500.00
- iii) Incremental Advance Amount - \$500.00
- iv) Target Balance - \$ _____
- v) Fees - _____

☐ **CASH SOLUTIONS MAXIMIZER OPTION** - The following terms apply to this option:

- i) Maximum Line Amount - _____
- ii) Minimum Loan Advance - \$500.00
- iii) Incremental Advance Amount - \$500.00
- iv) Target Balance - \$ _____
- v) Fees - _____
- vi) Balance in Account is not transferred to investments until all Loans are paid in full.

☐ **CASH SOLUTIONS LOAN OPTION** - The following terms apply to this option:

- i) Maximum Line Amount - _____
- ii) Minimum Loan Advance - \$500.00
- iii) Incremental Advance Amount - \$500.00
- iv) Target Balance - \$ _____
- v) Fees - _____

WITNESS/ATTEST:

BORROWER:

CCI Construction Co., Inc.

By: _____

Name: _____

Title: _____

(SEAL)

If Borrower is an individual he or she should sign below:

 Name: _____ (SEAL)



allfirst

COMMERCIAL LOAN NOTE
LINE OF CREDIT

\$ 1,200,000.00

Date 11-8-99

FOR VALUE RECEIVED, the undersigned, CCI Construction Co., Inc., a (corporation/partnership/limited liability company/individual) (the "Borrower"), jointly and severally (if more than one), promise to pay to the order of ALLFIRST BANK, a Maryland state-chartered commercial bank (the "Bank") or its assigns, the principal amount of ONE MILLION TWO HUNDRED THOUSAND & NO/100 DOLLARS to be paid as follows:
Principal is payable on demand.

Interest is payable monthly, accrued to date of Bank's notice thereof, with all accrued and unpaid interest, and unpaid fees and charges, due with the principal payment.

Interest shall accrue at a rate per annum equal to the Bank's Base Rate minus .50000% as in effect from time to time. The term "Bank's Base Rate," which is not necessarily the lowest rate of interest charged by the Bank, is defined as the prime rate of interest for loans established by the Bank from time to time.

Interest shall be calculated on the basis of the actual number of days elapsed and a year of 360 days. Both principal and interest are payable in lawful money of the United States of America at any office of Bank in immediately available funds. If any payment due hereunder is received by the Bank more than fifteen (15) calendar days after its due date, the Borrower shall pay a late payment charge equal to five percent (5%) of the amount then due or \$10.00, whichever is greater.

APPLICATION OF PAYMENTS. All payments made hereunder shall be applied first to late payment charges or other sums owed to the Bank, next to accrued interest, and then to principal, or in such other order or proportion as the Bank, in its sole and absolute discretion, may elect from time to time.

SECURITY. The payment of this note and any renewals, extensions and modifications thereof, and the payment, performance and discharge of all other present or future indebtedness, obligations and undertakings (individual, joint, several, direct, contingent, or otherwise) of the Borrower to or for the benefit of the Bank, whether arising directly to the Bank under this note or under any other agreement, promissory note or undertakings now existing or hereinafter entered by the Borrower to the Bank (collectively, the "Liabilities") is secured by the property described in, and under and pursuant to the terms and conditions of that certain:
Collateral as set forth in a Security Agreement - Specific Collateral dated 11/8/99.

EXHIBIT

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3/12/01 HMAIT

As additional security for the Liabilities, Borrower grants the Bank a lien upon and a security interest in any securities, instruments or other personal property of Borrower now or hereafter in Bank's possession and in any deposit balances now or hereafter held by Bank for Borrower's account and in all proceeds of any such personal property or deposit balances. Such liens and security interests shall be independent of Bank's right of setoff.

STATEMENT OF ACCOUNT. The Bank will furnish the Borrower with a statement of account on a periodic basis. Each and every statement of account shall be final, conclusive and binding upon the Borrower in all respects as to the outstanding balance of principal and as to all loans, fees, interest, charges, payments, receipts, balances, and all other matters reflected therein unless the Borrower, within ten (10) days after the posting thereof in the United States mail, shall give notice to the Bank in writing of any objections which the Borrower may have to any such statement of account; and in such event, only those items expressly objected to in such written notice shall be considered to be disputed by the Borrower and all other items shall be binding.

PAYMENT OF COSTS. In addition to the principal and interest payments specified above, the Borrower shall pay to the Bank or any other holder of this note, upon demand, all costs and expenses (including reasonable attorneys' fees, whether or not litigation is commenced) which may be incurred by the Bank or such holder in the collection or enforcement of this note. Said costs shall include reasonable attorneys' fees and costs in bankruptcy proceedings and any costs and attorneys' fees incurred for any action or proceeding in relation to the loan transaction, including but not limited to the joinder of Bank in any action between the Borrower and a third party.

DEFINITIONS. The Borrower shall be in default hereunder upon the occurrence of any of the following events: (a) the nonpayment when due of any amount payable on any of the Liabilities, or the failure of any Obligor to observe or perform any agreement of any nature whatsoever with the Bank (the term "Obligor" as used herein being meant to include the Borrower and all persons liable on the note or any renewals, extensions, or modification thereof, such as endorsers, sureties, or guarantors); (b) if any Obligor becomes insolvent or makes an assignment for the benefit of creditors, or if any petition is filed by or against any Obligor under any provisions of any law or statute alleging that such Obligor is insolvent or unable to pay debts as they mature; (c) the entry of any judgment against any Obligor or the occurrence of any attachment or garnishment against any property of any Obligor or the occurrence of any change in the financial condition of any Obligor which in the sole judgment of the Bank is materially adverse; (d) the dissolution, merger, consolidation or reorganization of any Obligor, which is an entity such as a corporation, limited partnership, partnership or limited liability company; (e) the death of any Obligor who is a natural person; (f) any information heretofore or hereinafter furnished to the Bank by any Obligor in connection with the loan evidenced hereby or any suretyship or guaranty should be materially false; and (g) the failure of any Obligor to furnish such financial and other information as the Bank may reasonably request. In the absence of, non-occurrence of or waiver of a default hereunder, and it is understood that Bank may demand payment at any time after giving Borrower a 30-day written notice of demand.

30 days written notice
ACCELERATION AND ENFORCEMENT RIGHTS. Whenever the Borrower shall be in default as aforesaid, (1) unless the Bank elects otherwise, the entire unpaid amount of such of the Liabilities as are not then due and payable shall become immediately due and payable without notice to or demand on any Obligor, and (2) the Bank may at its option exercise from time to time any or all rights and remedies available to it at law or in equity. The Borrower waives all right to stay of execution or garnishment and exemption of property in any action to enforce any of the Liabilities.

reasonable attorney fees
JUDGMENT. The Borrower does hereby authorize and empower any attorney of any court of record of Pennsylvania or elsewhere to appear for and enter judgment against Borrower for the above sum, with or without declaration, with costs of suit, including reasonable attorneys' fees and fees in bankruptcy proceedings, if any, release of errors, without stay of execution, and with fifteen (15%) percent added for collection fees, and the Borrower further agrees that real, personal or mixed property may be sold or garnished upon any writ of execution or writ of garnishment as now or hereafter provided by law or the Pennsylvania Rules of Civil Procedure governing the enforcement of judgments; and Borrower hereby waives and releases all relief from any appraisal, stay or exemption laws of any state now in force or hereafter enacted, if a copy hereof, verified by affidavit, shall have been filed in such proceeding, it shall not be necessary to file the original as a warrant of attorney. The Borrower (and each of them, if more than one) hereby waives the right to any stay of execution and the benefit of all exemption laws now or hereafter in effect. No single exercise of this warrant and power to confess judgment shall be deemed to exhaust this power, whether or not any such exercise shall be held by any court to be invalid, voidable or void, but this power shall continue undiminished and may be exercised from time to time as often as Bank shall elect until all sums due hereunder shall have been paid in full.

WAIVERS. The Borrower hereby, waives presentment, notice of dishonor and protest. The Borrower hereby waives and releases all errors, defects and imperfections of a procedural nature in any proceedings instituted by the Bank hereunder, as well as all benefit that might accrue to the Borrower by virtue of any present or future laws exempting any property, real or personal, or any part of the proceeds arising from any sale of such property, from garnishment, attachment, levy or sale under execution, or providing for any stay of execution, exemption from civil process, or extension of time for payment. The Borrower agrees that any property, real or personal, that may be levied upon pursuant to any writ of execution or writ of garnishment issued on any judgment by virtue of this note, may be sold, in whole or in part, in any order desired by the Bank.

HOLDERS IN DUE COURSE. This note may be assigned by the Bank or any subsequent holder of this note at any time or from time to time. The Borrower hereby agrees that no subsequent holder of this note to whom the note was transferred for value shall be subject to any claims or defenses which the Borrower may have against a prior holder, all of which are waived as to such subsequent holder, and that all such subsequent holders shall have all of the rights of a holder in due course even though the subsequent holder may not qualify, under applicable law, absent this paragraph, as a holder in due course.

MISCELLANEOUS. Any failure of the Bank to exercise any right hereunder shall not be construed as a waiver of the right to exercise the same or any other right at any other time. If the Borrower consists of more than one person, such persons shall be jointly and severally liable hereunder. The Borrower intends this to be a sealed instrument and to be legally bound hereby. This note shall inure to the benefit of and be enforceable by the Bank and its successors and assigns and be binding and enforceable against the Borrower, its legal representatives, successors and permitted assigns. All issues arising hereunder shall be governed by the laws of Pennsylvania without giving effect to choice of law rules.

WITNESS OR ATTEST:

CCI Construction Co., Inc.

BORROWER:

[Signature]
Name and Title (Seal)

Name and Title (Seal)

Name and Title (Seal)

Name and Title (Seal)

(Name of Individual, Corporation, Partnership, or Limited Liability Company)

By: *[Signature]* (Seal)
Name and Title

By: _____ (Seal)
Name and Title

By: _____ (Seal)
Name and Title

By: _____ (Seal)
Name and Title

2500 Old Gettysburg Road Camp Hill, PA 17001
Address

EXHIBIT

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21/3/01 TU

SURETYSHIP AGREEMENT

Date _____

11-8-99

As security for the Liabilities hereunder, the Undersigned hereby grants Bank a security interest in the following:

NONE

Any amounts received by the Bank from whatever source on account of the Liabilities may be applied by Bank toward the payment of such of the Liabilities and in such order of application, as the Bank may from time to time elect; and, notwithstanding any payments made by or for the account of the Undersigned pursuant to this Suretyship Agreement, the Undersigned shall not be subrogated to any rights of the Bank until such time as this Suretyship Agreement shall have been discontinued as to all of the Undersigned and the Bank shall have received payment of the full amount of all Liabilities and of all obligations of the Undersigned hereunder. The Bank shall not be obligated under any theory of law relating to the marshalling of payment received or security interest granted under the terms of this Suretyship Agreement.

The Bank may, from time to time, before or after any discontinuance of this Suretyship Agreement, without notice to the undersigned (or any of them), assign or transfer any or all of its Liabilities or any interest therein; and, notwithstanding any such assignment or transfer or any subsequent assignment or transfer thereof, such Liabilities shall be and remain Liabilities for the purpose of this Suretyship Agreement and each and every immediate and successive assignee or transferee of any of the Liabilities or of any interest therein shall, to the extent of the interest of such assignee or transferee in the Liabilities, be entitled to the benefits of this Suretyship Agreement to the same extent as if such assignee or transferee were the Bank; provided, however, that unless the Bank shall otherwise consent in writing, the Bank shall have an unimpaired right prior and superior to that of any such assignee or transferee, to enforce this Suretyship Agreement for the benefit of the Bank, as to those of the Liabilities which the Bank has not assigned or transferred.

No modification or waiver of any of the provisions of this Suretyship Agreement shall be binding upon the Bank except as expressly set forth in writing duly signed by each of the Undersigned and the Bank. No action of the Bank permitted hereunder shall in any way affect or impair the rights of the Bank and the obligation of the Undersigned under this Suretyship Agreement. For the purpose of this Suretyship Agreement, Liabilities shall include all obligations of the Borrower to the Bank notwithstanding any right or power of the Borrower or anyone else to assert any claim or defense as to the invalidity or unenforceability of any such obligation and no such claim or defense shall affect or impair the obligations of the Undersigned hereunder.

The Liability of the Undersigned for Liabilities of Borrower incurred on or prior to the date hereof shall not exceed, at any time, the aggregate principal amount of ONE MILLION TWO HUNDRED THOUSAND & NO/100 DOLLARS (\$ 1,200,000.00), plus interest as stated in the evidence of indebtedness given by Borrower to Bank and fifteen percent (15%) attorneys' commission; provided that this Suretyship Agreement shall also be applicable to and extend to any and all Liabilities, plus interest and costs as aforesaid, of Borrower arising after the date hereof even if the total of such Liabilities plus the Liabilities outstanding on or prior to the date hereof exceed the aforementioned aggregate principal amount. If no limitation is inserted in this paragraph, there is no limit to the liability of the Undersigned to the Bank.

The creation or existence from time to time of Liabilities in excess of any amount to which the right of recovery under this Suretyship Agreement is limited is hereby authorized, without notice to the Undersigned (or any of them), and shall in no way affect or impair the rights of the Bank and the obligation of the Undersigned under this Suretyship Agreement.

The Undersigned, jointly and severally, do hereby authorize and empower any prothonotary or clerk or attorney of any court of record of Pennsylvania or elsewhere, to appear for and confess judgment against any or all of the Undersigned in favor of Bank for the total liability of the Undersigned as set forth herein together with interest thereon, with or without declaration, with costs of suit, release of errors, without stay of execution or garnishment and with fifteen percent (15%) for collection fees, and waive the right of inquisition, and the benefit of all exemption laws now or hereinafter enacted, and agree to condemnation and the sale of real estate or personal property, or a writ of execution.

In the event the Bank acquires any property securing this Suretyship Agreement after a foreclosure sale as to real property or a public auction sale as to personal property, the Undersigned agrees to indemnify and hold the Bank harmless from any loss, costs, or expense which the Bank may sustain as a result of: (a) selling the real or personal property so acquired for less than the total sums owed by the Borrower to the Bank, provided, however, that any such sale by the Bank is done in a commercially reasonable manner or (b) any action brought against the Bank under §548 or §544(b) of the United States Bankruptcy Code, as amended, on the ground that the consideration paid by the Bank for the real or personal property was not "fair equivalent value," within the contemplation of §544(b) of the United States Bankruptcy Code, as amended, or any applicable state fraudulent conveyance act.

The Undersigned waive and release the Bank from any damages which the Undersigned may incur as a result of any intentional or unintentional or negligent action or inaction of the Bank impairing, diminishing, or destroying any of the Undersigned's rights of subrogation which the Undersigned may have upon payment of any of the Borrower's obligations. The Undersigned acknowledges previously having waived, under certain conditions, any such rights.

The Undersigned hereby agrees that this Suretyship Agreement shall apply to any obligation which the Bank may incur as the result of any payment to Bank by or on behalf of the Borrower which is determined to be a preference payment benefiting the undersigned.

If a photostatic copy hereof shall have been filed in any of said proceedings, it shall not be necessary to file the original as a warrant of attorney. The foregoing warrant and power to confess judgment shall not be deemed to have been exhausted by any single exercise thereof, whether or not any such exercise shall be held by any court to be invalid, voidable or void, but may be exercised from time to time, as often as the Bank shall elect, until all sums payable or that may become payable by each of the Undersigned have been paid in full.

A subsequent guaranty or suretyship by the Undersigned or any other guarantor or surety of the Borrower's Liabilities given to the Bank shall not be deemed to be in lieu of or to supersede or terminate this Suretyship Agreement but shall be construed to be additional or supplementary unless otherwise expressly provided therein; and in the event the Undersigned or any other guarantor or surety has given to the Bank a previous guaranty or Suretyship Agreement, this Suretyship Agreement shall be construed to be additional or supplementary, and not to be in lieu thereof or to terminate such previous Suretyship Agreement, guaranty or guaranties unless expressly so provided herein.

This Suretyship Agreement shall be binding upon the Undersigned, and upon the heirs, legal representatives, successors and assigns of the Undersigned, and to the extent that the Borrower or any of the Undersigned is an entity such as a partnership, limited partnership, limited liability company, corporation or any other similar entity, all references herein to the Borrower and to the Undersigned, respectively, shall be deemed to include any successor or successors, whether immediate or remote, to such entity. If more than one party shall execute this Suretyship Agreement, the term "Undersigned" as used herein shall mean all parties executing this Suretyship Agreement and each of them, and all such parties shall be jointly and severally obligated hereunder.

This Suretyship Agreement shall be construed in accordance with and governed by the laws of the Commonwealth of Pennsylvania without giving effect to choice of law rules. Wherever possible each provision of this Suretyship Agreement shall be interpreted in such manner as to be effective and valid under applicable law but if any provision of this Suretyship Agreement shall be prohibited by or invalid under such law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Suretyship Agreement.

INTENDING TO BE LEGALLY BOUND HEREBY, the Undersigned have set their respective hands and seals: the day and year first above written.

WITNESS OR ATTEST:

(SURETY) John M. Ortensio

Title _____

By: _____

Title: _____

(SEAL)

Title: _____

By: _____

Title: _____

(SEAL)

Title: _____

By: _____

Title: _____

(SEAL)

CCI CONSTRUCTION COMPANY, INC.

*YEARS ENDED
DECEMBER 31, 1998 AND 1997*

EXHIBIT

3

3/12/02 HMT

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CCI CONSTRUCTION COMPANY, INC.

YEARS ENDED DECEMBER 31, 1998 AND 1997

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Independent Auditors' Report

Board of Directors
CCI Construction Company, Inc.
Mechanicsburg, Pennsylvania

We have audited the accompanying balance sheets of CCI Construction Company, Inc. as of December 31, 1998 and 1997 and the related statements of income, shareholder's equity and cash flows for the years then ended. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with generally accepted auditing standards. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of CCI Construction Company, Inc. as of December 31, 1998 and 1997 and the results of its operations and its cash flows for the years then ended, in conformity with generally accepted accounting principles.

Our audits of the financial statements were made for the purpose of forming an opinion on the basic financial statements taken as a whole. The accompanying information is presented for purposes of additional analysis and is not a required part of the basic financial statements. Such information has been subjected to the auditing procedures applied in the audits of the basic financial statements and, in our opinion, is fairly stated in all material respects in relation to the basic financial statements taken as a whole.

Brown Schulz Sheridan & Fritz

February 10, 1999

CERTIFIED PUBLIC ACCOUNTANTS

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CCI CONSTRUCTION COMPANY, INC.

BALANCE SHEETS - DECEMBER 31, 1998 AND 1997

	1998	1997
ASSETS		
Current assets:		
Cash and cash equivalents	\$ 2,429,866	\$ 1,128,337
Investments in marketable securities	631,481	3,702,992
Accounts receivable, trade:		
Customers:		
Current	5,964,311	8,230,674
Retained	1,822,224	1,121,610
Affiliates	365,756	3,485
Note receivable		22,569
Costs and estimated earnings in excess of billings		
on uncompleted contracts	6,341,726	1,072,281
Prepaid expenses	170,232	6,185
Shop inventory	38,161	639
Total current assets	<u>17,763,757</u>	<u>15,288,772</u>
Property and equipment:		
Automobiles and trucks	1,269,567	427,342
Furniture	851,738	553,587
Machinery and equipment	5,947,290	1,323,233
Other	344,128	72,453
	<u>8,412,723</u>	<u>2,376,615</u>
Less accumulated depreciation	<u>1,651,485</u>	<u>920,919</u>
	<u>6,761,238</u>	<u>1,455,696</u>
Other assets:		
Cash surrender value of officer's life insurance	55,453	
Investments	<u>34,000</u>	
	<u>89,453</u>	
	<u>\$ 24,614,448</u>	<u>\$ 16,744,468</u>

See notes to financial statements.

LIABILITIES AND SHAREHOLDER'S EQUITY

	<u>1998</u>	<u>1997</u>
Current liabilities:		
Accounts payable, trade:		
Current	\$ 10,974,274	\$ 7,846,395
Retained	2,180,967	1,078,950
Notes payable		815,781
Current portion of long-term debt	1,338,280	
Accrued expenses	333,060	808,601
Taxes withheld and accrued	91,601	58,023
Billings in excess of costs and estimated earnings on uncompleted contracts	288,208	681,924
	<u>15,206,390</u>	<u>11,289,674</u>
Total current liabilities		
Long-term debt, net of current portion	<u>4,164,375</u>	
Total liabilities	<u>19,370,765</u>	<u>11,289,674</u>
Shareholder's equity:		
Common stock, \$1 par, 1,000 shares authorized; 39 shares issued and outstanding	39	39
Capital in excess of par	9,758	9,758
Retained earnings	5,254,834	5,208,489
Accumulated other comprehensive income (loss), unrealized gain (loss) on marketable securities	(20,948)	236,508
	<u>5,243,683</u>	<u>5,454,794</u>
	<u>\$ 24,614,448</u>	<u>\$ 16,744,468</u>

CCI CONSTRUCTION COMPANY, INC.

STATEMENTS OF INCOME

YEARS ENDED DECEMBER 31, 1998 AND 1997

	<u>1998</u>	<u>1997</u>
Revenue	\$ 52,534,453	\$ 34,921,676
Cost of contracts	<u>51,145,382</u>	<u>32,617,473</u>
Gross profit	1,389,071	2,304,203
General and administrative expenses	<u>1,505,700</u>	<u>1,954,380</u>
Income (loss) from operations	<u>(116,629)</u>	<u>349,823</u>
Other income (expense):		
Gain (loss) on sale of:		
Marketable securities and cash equivalents	260,927	(6,016)
Property and equipment	10,069	(2,920)
Interest	(161,296)	
Investment	151,592	367,538
Miscellaneous	<u>(85,622)</u>	<u>(1,546)</u>
	<u>175,670</u>	<u>357,056</u>
Net income	<u>\$ 59,041</u>	<u>\$ 706,879</u>

See notes to financial statements.

CCI CONSTRUCTION COMPANY, INC.

STATEMENTS OF SHAREHOLDER'S EQUITY

YEARS ENDED DECEMBER 31, 1998 AND 1997

	Common stock	Capital in excess of par	Retained earnings	Accumulated other comprehensive income (loss)	Total
Balance, December 31, 1996	\$ 39	\$ 9,758	\$ 4,768,011	\$ 42,867	\$ 4,820,675
Comprehensive income:					
Net income			706,879		706,879
Other comprehensive income:					
Unrealized holding gains arising during the period				187,348	187,348
on marketable securities				6,293	6,293
Add reclassification adjustment					
					193,641
Comprehensive income					900,520
Distributions			(266,401)		(266,401)
Balance, December 31, 1997 (carried forward)	39	9,758	5,208,489	236,508	5,454,794

(continued)

CCI CONSTRUCTION COMPANY, INC.

STATEMENTS OF SHAREHOLDER'S EQUITY (CONTINUED)

YEARS ENDED DECEMBER 31, 1998 AND 1997

	Common stock	Capital in excess of par	Retained earnings	Accumulated other comprehensive income (loss)	Total
Balance, December 31, 1997 (brought forward)	\$ 39	\$ 9,758	\$ 5,208,489	\$ 236,508	\$ 5,454,794
Comprehensive loss:					
Net income			59,041		59,041
Other comprehensive income (loss):					
Unrealized holding gains arising during the period				3,469	3,469
on marketable securities				(260,925)	(260,925)
Less reclassification adjustment					
				(257,456)	(257,456)
Comprehensive loss				(198,415)	(198,415)
Distributions			(12,696)		(12,696)
Balance, December 31, 1998	\$ 39	\$ 9,758	\$ 5,254,834	\$ (20,948)	\$ 5,243,683

See notes to financial statements.

CCI CONSTRUCTION COMPANY, INC.

STATEMENTS OF CASH FLOWS

YEARS ENDED DECEMBER 31, 1998 AND 1997

	<u>1998</u>	<u>1997</u>
Cash flows from operating activities:		
Net income	\$ 59,041	\$ 706,879
Adjustments:		
Depreciation	793,014	156,504
(Gain) loss on sale of:		
Property and equipment	(10,069)	2,920
Marketable securities	(260,927)	6,293
(Increase) decrease in:		
Accounts receivable	1,203,478	(5,516,738)
Costs and estimated earnings in excess of billings on uncompleted contracts	(5,269,445)	(692,618)
Prepaid expenses	(164,047)	47,047
Shop inventory	(37,522)	(639)
Cash surrender value of officer's life insurance	(55,453)	
Increase (decrease) in:		
Accounts payable	4,229,896	4,912,287
Accrued expenses	(475,541)	530,442
Taxes withheld and accrued	33,578	47,166
Billings in excess of costs and estimated earnings on uncompleted contracts	(393,716)	172,293
Total adjustments	(406,754)	(335,043)
Net cash provided by (used in) operating activities	(347,713)	371,836
Cash flows from investing activities:		
Purchase of:		
Investments	(161,670)	(11,093,130)
Property and equipment	(98,793)	(560,929)
Repayment of note receivable	22,569	9,120
Proceeds from:		
Sale and maturities of investments	3,202,652	9,381,163
Sale of property and equipment	28,502	13,864
Net cash provided by (used in) investing activities	2,993,260	(2,249,912)

(continued)

CCI CONSTRUCTION COMPANY, INC.

STATEMENTS OF CASH FLOWS (CONTINUED)

YEARS ENDED DECEMBER 31, 1998 AND 1997

	<u>1998</u>	<u>1997</u>
Cash flows from financing activities:		
Distributions to shareholder	\$(12,696)	\$(266,401)
Proceeds from issuance of notes payable and long-term debt	17,990,666	
Repayment of notes payable and long-term debt	<u>(19,321,988)</u>	<u>(73,301)</u>
Net cash used in financing activities	<u>(1,344,018)</u>	<u>(339,702)</u>
Net increase (decrease) in cash and cash equivalents	1,301,529	(2,217,778)
Cash and cash equivalents, beginning of year	<u>1,128,337</u>	<u>3,346,115</u>
Cash and cash equivalents, end of year	<u>\$ 2,429,866</u>	<u>\$ 1,128,337</u>
Supplemental disclosure of cash flow information:		
Cash paid during the year for interest	\$ 161,296	\$ 1,707
Noncash activities:		
Net increase (decrease) in unrealized gain on marketable securities (see statements of shareholder's equity)	\$(257,456)	\$ 193,641
Notes payable incurred for the acquisition of new equipment	\$ 6,018,196	\$ 889,082

See notes to financial statements.

CCI CONSTRUCTION COMPANY, INC.

NOTES TO FINANCIAL STATEMENTS

YEARS ENDED DECEMBER 31, 1998 AND 1997

1. Summary of significant accounting policies:

Operations and operating cycle:

The Company constructs and renovates commercial buildings primarily under fixed-price contracts in the eastern United States. The Company's receivables are concentrated among customers in this geographic area. The Company extends credit to its customers and generally requires no collateral.

The length of the Company's contracts varies but is typically between one to two years. In accordance with normal practice in the construction industry, the Company includes asset and liability accounts relating to construction contracts in current assets and liabilities even when such amounts are realizable or payable over a period in excess of one year.

Use of estimates:

The preparation of financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

Revenue and cost recognition:

Revenues from construction contracts are recognized on the percentage-of-completion method, measured by the percentage of direct cost incurred to date to estimated total direct cost for each contract. That method is used because management considers direct cost to be the best available measure of progress on the contracts. Because of inherent uncertainties in estimating costs, it is at least reasonably possible that the estimates used will change within the near term.

For purposes of determining percentage of completion estimates, contract costs include all direct material, labor and subcontracting costs and other direct costs related to contract performance. Indirect costs and general and administrative costs are charged to expense as incurred. Provisions for estimated losses on uncompleted contracts are made in the period in which such losses are first determined. Changes in job performance, job conditions and estimated profitability may result in revisions to costs and income and are recognized in the period in which the revisions are determined. An amount equal to contract costs attributable to claims is included in revenues when realization is probable and the amount can be reliably estimated.

CCI CONSTRUCTION COMPANY, INC.

NOTES TO FINANCIAL STATEMENTS (CONTINUED)

YEARS ENDED DECEMBER 31, 1998 AND 1997

1. Summary of significant accounting policies (continued):

Revenue and cost recognition (continued):

The asset, "Costs and estimated earnings in excess of billings on uncompleted contracts," represents revenues recognized in excess of amounts billed. The liability, "Billings in excess of costs and estimated earnings on uncompleted contracts," represents billings in excess of revenues recognized.

Cash and cash equivalents:

For purposes of reporting cash flows, the Company considers all highly liquid debt instruments purchased with a maturity of three months or less to be cash equivalents.

Marketable securities:

Marketable securities are reported at fair value, with unrealized gains and losses excluded from earnings and reported in a separate component of stockholder's equity. Fair value of the marketable securities is based on quoted market prices for those or similar securities or quotes from brokers. Gains and losses are determined using the specific identification method when securities are sold.

Property and equipment:

Property and equipment are stated at cost. Depreciation is provided using straight-line and accelerated methods over the estimated useful lives of the assets.

Change in presentation:

During 1998, the Company adopted Statement of Financial Accounting Standards No. 130, Reporting Comprehensive Income (SFAS No. 130). SFAS No. 130 requires the reporting of comprehensive income in addition to net income from operations. Comprehensive income is a more inclusive financial reporting methodology that includes disclosure of certain financial information that historically has not been recognized in the calculation of net income. SFAS No. 130 requires that the earlier year provided for comparative purposes be reclassified to conform to the statement.

CCI CONSTRUCTION COMPANY, INC.

NOTES TO FINANCIAL STATEMENTS (CONTINUED)

YEARS ENDED DECEMBER 31, 1998 AND 1997

2. Cash and cash equivalents:

Cash and cash equivalents consist of the following:

	<u>1998</u>	<u>1997</u>
Cash	\$ 374,464	\$ 451
Money market funds -	1,035	403,714
Repurchase agreements	<u>2,054,367</u>	<u>724,172</u>
	<u>\$ 2,429,866</u>	<u>\$ 1,128,337</u>

At December 31, 1998, the amount of deposits in cash held at the bank exceeded the Federal Deposit Insurance Corporation (FDIC) insurance by \$867,883. The money market funds and the repurchase agreements are not insured by the FDIC. The repurchase agreements sold by a bank were held in custody by this bank for the account of CCI Construction Company, Inc. and were invested in securities, which are not pledged as collateral.

3. Marketable securities:

The cost or amortized cost and the aggregate fair value of investments in the debt and equity securities at December 31, 1998 and 1997 are as follows:

	<u>1998</u>		
	<u>Cost or amortized cost</u>	<u>Gross unrealized losses</u>	<u>Estimated fair value</u>
Available-for-sale securities, mutual funds	<u>\$ 652,429</u>	<u>\$ 20,948</u>	<u>\$ 631,481</u>

	<u>1997</u>			
	<u>Cost or amortized cost</u>	<u>Gross unrealized losses</u>	<u>Gross unrealized gains</u>	<u>Estimated fair value</u>
Available-for-sale securities:				
Mutual funds	\$ 3,386,480	\$ 16,845	\$ 253,465	\$ 3,623,100
Obligations of states and political subdivisions	<u>80,004</u>	<u>112</u>		<u>79,892</u>
	<u>\$ 3,466,484</u>	<u>\$ 16,957</u>	<u>\$ 253,465</u>	<u>\$ 3,702,992</u>

CCI CONSTRUCTION COMPANY, INC.

NOTES TO FINANCIAL STATEMENTS (CONTINUED)

YEARS ENDED DECEMBER 31, 1998 AND 1997

3. Marketable securities (continued):

	<u>1998</u>	<u>1997</u>
Cost of securities sold	\$ 2,941,725	\$ 9,387,456
Proceeds from sale	3,202,652	9,381,163
Gross realized gains	262,391	
Gross realized losses	1,464	6,293

4. Uncompleted contracts:

	<u>1998</u>	<u>1997</u>
Contract costs	\$ 42,225,606	\$ 27,920,734
Estimated earnings thereon	<u>3,130,223</u>	<u>1,638,199</u>
	45,355,829	29,558,933
Less billings applicable thereto	<u>39,302,311</u>	<u>29,168,576</u>
	<u>\$ 6,053,518</u>	<u>\$ 390,357</u>
Included in the balance sheet as:		
Costs and estimated earnings in excess of billings on uncompleted contracts	\$ 6,341,726	\$ 1,072,281
Billings in excess of costs and estimated earnings on uncompleted contracts	<u>(288,208)</u>	<u>(681,924)</u>
	<u>\$ 6,053,518</u>	<u>\$ 390,357</u>

5. Long-term debt:

Long-term debt consists of the following:

Obligations to various financing corporations due in current monthly installments totaling \$116,074, including interest at fixed rates approximating 7%. The notes, which are secured by the financed equipment, mature at various dates through August 2003.

<u>1998</u>
\$ 3,964,581

CCI CONSTRUCTION COMPANY, INC.**NOTES TO FINANCIAL STATEMENTS (CONTINUED)****YEARS ENDED DECEMBER 31, 1998 AND 1997****5. Long-term debt (continued):**

	<u>1998</u>
Borrowings under a \$2,000,000 bank equipment line of credit are secured by the financed equipment. The agreement requires the December 31, 1998 balance to be repaid by December 2003 in monthly installments of \$30,238, including interest at a fixed rate of 6.7%.	<u>\$ 1,538,074</u>
Total long-term debt	5,502,655
Less current portion	<u>1,338,280</u>
Long-term debt portion	<u>\$ 4,164,375</u>

Aggregate principal payments due on long-term debt for the five years subsequent to December 31, 1998 are as follows:

1999	\$ 1,338,280
2000	1,415,424
2001	1,242,569
2002	961,559
2003	<u>544,823</u>
	<u>\$ 5,502,655</u>

6. Operating line of credit:

The Company has available a \$2,000,000 unsecured operating line of credit expiring on April 30, 1999 which requires interest at the bank's prime rate less 1/2%. The Company has no outstanding balance on the line at December 31, 1998.

7. Rent expense:

Various equipment and operating facilities are leased under noncancellable agreements. Total rent expense for all leases, including the related party lease discussed in Note 8, was \$1,689,666 and \$432,492 in 1998 and 1997, respectively.

The aggregate minimum rental commitments under all noncancellable leases at December 31, 1998 totaling \$28,639 are due in 1999.

CCI CONSTRUCTION COMPANY, INC.

NOTES TO FINANCIAL STATEMENTS (CONTINUED)

YEARS ENDED DECEMBER 31, 1998 AND 1997

8. Related party transactions:

The Company is leasing an operating facility owned by its sole shareholder through March 31, 1999. The lease requires a monthly rental payment of \$4,037. Rent expense for this facility was \$48,444 and \$45,000 for 1998 and 1997, respectively.

Effective April 1, 1999, the Company will begin leasing an operating facility from Mechanicsburg Land Company, which is owned by the Company's sole shareholder, on a year-to-year basis. The initial lease, which expires December 31, 1999, requires monthly lease payments of \$14,329. Additionally, the Company entered into a contract for the construction of this facility with Mechanicsburg Land Company. Billings of \$339,203 were included in accounts receivable as of December 31, 1998.

During 1997, the Company incurred warranty insurance expense of \$825,000 with Pennsylvania Contractors Insurance Company, a corporation under common control. These costs are allocated as direct cost of contracts. There were no such costs in 1998.

During 1998, two insurance claims for contract losses incurred of \$900,000 were paid by Pennsylvania Contractors Insurance Company. These claims were covered under the terms of a remedial work period insurance policy.

In addition, Pennsylvania Contractors Insurance Company has guaranteed a claim of \$1,162,460 filed by the Company with a contract owner. If the owner fails to pay all or any part of this claim, the insurance company will pay the unpaid portion.

9. Income taxes:

No provision has been made for federal or state income taxes. Under provisions of the Internal Revenue Code and the Commonwealth of Pennsylvania Tax Act, the Company has elected not to be taxed as a corporation and the sole shareholder has consented to include the income in his individual return.

10. Year 2000 issues:

Like any other company, advances and changes in available technology can significantly affect the business and operations of the Company. A challenging problem exists as many computer systems worldwide do not have the capability of recognizing the year 2000 or years thereafter. No easy technology "quick fix" has yet been developed for this problem. While the Company has not requested verification of its year 2000 status from its auditors, it believes its computer systems will effectively deal with transactions in the year 2000 and beyond. This "Year 2000 Computer Problem" creates risk for the Company from unforeseen problems from third parties with whom the Company deals on financial transactions. Failures of the third parties' computer systems could have an impact to the Company's ability to conduct its business. The effect, if any, is unknown at this time.

CCI CONSTRUCTION COMPANY, INC.

COST OF CONTRACTS

YEARS ENDED DECEMBER 31, 1998 AND 1997

	<u>1998</u>	<u>1997</u>
Direct costs:		
Labor	\$ 6,457,982	\$ 2,886,054
Payroll taxes	702,129	335,936
Employee benefits	667,597	677,477
Equipment	111,207	41,373
Equipment rental	1,625,224	381,924
Materials	10,371,108	4,259,253
Other	1,745,316	1,679,129
Subcontractors	<u>27,802,562</u>	<u>22,099,706</u>
	<u>49,483,125</u>	<u>32,360,852</u>
Indirect costs:		
Salaries	528,517	86,208
Payroll taxes	61,224	11,217
Employee benefits	70,560	8,324
Blueprints	163	6
Depreciation	687,512	95,723
Dues and permits	5,340	710
Employee recruitment	44,621	7,151
Insurance	4,486	716
Office supplies and expense	53,393	8,112
Postage	2,187	253
Professional services	37,338	
Rent	40,731	8,636
Repairs and maintenance	12,655	3,648
Safety	2,732	2,157
Telephone	28,926	11,802
Temporary help	7,591	
Trade books and journals	1,892	556
Training and seminars	8,303	
Travel and entertainment	10,290	728
Utilities	10,397	1,413
Warehouse expenses	<u>43,399</u>	<u>9,261</u>
	<u>1,662,257</u>	<u>256,621</u>
Total cost of contracts	<u>\$ 51,145,382</u>	<u>\$ 32,617,473</u>

CCI CONSTRUCTION COMPANY, INC.**GENERAL AND ADMINISTRATIVE EXPENSES**

YEARS ENDED DECEMBER 31, 1998 AND 1997

	<u>1998</u>	<u>1997</u>
Salaries:		
Officers	\$ 353,939	\$ 1,038,273
Office	480,807	410,023
Payroll taxes	60,247	73,399
Employee:		
Benefits	53,857	33,722
Recruitment	4,379	2,237
Advertising	3,067	1,038
Bad debt	22,569	
Bank charges	5,111	3,667
Blueprints	17,551	13,507
Company sponsored activities	2,373	1,098
Contributions	14,220	3,030
Depreciation	105,502	60,781
Dues	16,335	8,058
Insurance	12,399	12,162
Licenses and taxes	44,559	44,270
Miscellaneous		265
Office supplies	50,617	18,875
Postage	8,967	7,914
Professional services	109,543	95,337
Rent	23,711	33,744
Repairs and maintenance	6,555	7,689
Telephone	19,164	31,328
Temporary help	1,719	
Trade books and journals	24,222	22,995
Training and seminars	5,938	1,086
Travel and entertainment	30,687	5,948
Utilities	<u>27,662</u>	<u>23,934</u>
Total general and administrative expenses	<u>\$ 1,505,700</u>	<u>\$ 1,954,380</u>

CCI CONSTRUCTION COMPANY, INC.**EARNINGS FROM CONTRACTS****YEAR ENDED DECEMBER 31, 1998**

	<u>Revenues earned</u>	<u>Cost of revenues earned</u>	<u>Gross profit (loss)</u>
Contracts completed during the year	\$ 13,541,950	\$ 13,969,824 (a)	\$ (427,874)
Contracts-in-progress at year-end	38,721,607	35,389,315 (a)	3,332,292
Construction management contracts	83,777	20,444 (a)	63,333
Time and material jobs	<u>187,119</u>	<u>103,542</u> (a)	<u>83,577</u>
	52,534,453	49,483,125	3,051,328
Indirect costs	<u> </u>	<u>1,662,257</u>	<u>(1,662,257)</u>
	<u>\$ 52,534,453</u>	<u>\$ 51,145,382</u>	<u>\$ 1,389,071</u>

(a) Excludes indirect costs not allocated to specific jobs.

CCI CONSTRUCTION COMPANY, INC.

COMPLETED CONTRACTS

YEAR ENDED DECEMBER 31, 1998

Job number	Contract	Contract totals			Before January 1, 1998			During the year ended December 31, 1998		
		Revenues earned	Cost of revenues earned	Gross profit (loss) before indirect costs	Revenues earned	Cost of revenues earned	Gross profit before indirect costs	Revenues earned	Cost of revenues earned	Gross profit (loss) before indirect costs
428	U.E.P.H. Complex	\$ 19,272,256	\$ 17,479,889	\$ 1,792,367	\$ 17,763,732	\$ 15,878,479	\$ 1,885,253	\$ 1,508,524	\$ 1,601,410	\$ (92,886)
445	Houtzdale Prison	10,937,202	11,397,234	(460,032)	4,086,420	4,169,371	(82,951)	6,850,782	7,227,863	(377,081)
448	Outlook Creekview	4,800,644	4,655,443	145,201	554,419	521,254	33,165	4,246,225	4,134,189	112,036
448	U.E.P.H. Headquarters	1,456,558	1,521,701	(65,143)	520,139	515,339	4,800	936,419	1,006,362	(69,943)
		<u>\$ 36,466,660</u>	<u>\$ 35,054,267</u>	<u>\$ 1,412,393</u>	<u>\$ 22,924,710</u>	<u>\$ 21,084,443</u>	<u>\$ 1,840,267</u>	<u>\$ 13,541,950</u>	<u>\$ 13,969,824</u>	<u>\$ (427,874)</u>

CCI CONSTRUCTION COMPANY, INC.

CONTRACTS-IN-PROGRESS

DECEMBER 31, 1998

Job number	Project	Total contract price	Estimated total direct contract costs	Estimated total contract earnings (loss) before indirect costs	Inception to December 31, 1998			December 31, 1998		Year ended December 31, 1998		
					Direct contract costs to December 31, 1998	Contract earnings (loss) accrued to December 31, 1998	Billings to December 31, 1998	Costs and estimated earnings in excess of billings	Billings in excess of costs and estimated earnings	Revenues earned	Direct cost of revenues earned	Gross profit (loss) before indirect costs
439	Mahanoy Prison	\$ 11,699,418	\$ 10,667,972	\$ 1,031,446	\$ 10,666,808	\$ 1,031,333	\$ 10,481,740	\$ 1,216,401		\$ 5,623,543	\$ 4,357,566	\$ 1,265,957
450	Johnstown	3,266,600	3,245,082	21,518	1,172,766	7,776	730,724	449,618		1,064,029	1,057,305	6,724
451	Lord Fairfax	7,082,984	7,301,111	(218,127)	6,659,984	(218,127)	6,570,468		\$ 128,611	5,998,746	6,248,378	(249,630)
454	Albemarle Prison	14,524,840	12,875,751	1,649,089	4,819,694	617,292	4,719,426	717,560		5,436,986	4,819,684	617,292
455	Perry Point	12,937,341	11,463,940	1,473,501	4,734,492	608,547	3,108,536	2,234,503		5,343,039	4,734,492	608,547
456	Outlook - Hilliard	5,380,745	4,801,310	579,435	2,715,193	327,677	2,732,602	310,268		3,042,870	2,715,193	327,677
457	Camp Hill	1,495,629	1,372,273	123,356	547,295	49,197	617,799		21,307	596,492	547,295	49,197
459	Scott Air Force Base	14,870,150	13,929,350	940,800	6,076,575	407,040	6,571,905		138,290	6,433,815	6,026,575	407,040
460	Germ Plasma Center	15,505,000	14,667,024	897,976	2,905,995	177,917	2,252,156	831,756		3,063,912	2,905,995	177,917
461	Outlook - Chesterfield	3,842,372	3,629,824	212,548	1,518,251	88,902	1,097,444	509,709		1,607,153	1,518,251	88,902
462	Outlook - Westerville	5,589,900	5,218,140	371,760	459,553	32,669	419,511	71,711		491,222	459,553	32,669
		\$ 96,254,979	\$ 89,171,677	\$ 7,083,302	\$ 42,225,606	\$ 3,130,223	\$ 39,302,311	\$ 6,341,726	\$ 288,208	\$ 38,721,607	\$ 35,380,315	\$ 3,332,292

allfirst
3607 Derry Street
Harrisburg, PA 17111
Special Credits 900-03-05
(717) 565-2878
(717) 565-2870 (Fax)

facsimile transmittal

To: Eileen K. Fax: 507-3953
From: Luis Date: 3/1/00
Re: CCI Pages: 10 (Including Cover Page)
CC: _____
☐ Urgent ☐ For Review ☐ Please Comment ☐ Please Reply ☐ Please Recycle

Notes:

1st fax 10 pgs. (partial)
2nd fax 13 pgs. (completed)

12-13-00-1999

CCI CONSTRUCTION CO., INC.
BALANCE SHEETPAGE 1
02-14-2000 14:07

12/31/99

1000	A S S E T S		
1002	*CURRENT ASSETS*		
1040	CASH & INVESTMENTS	(594,857.26)	
1049	TOTAL CASH & INVESTMENTS	(594,857.26)	
1050	ACCOUNTS RECEIVABLE:		
1100	ACCOUNTS RECEIVABLE	12,230,914.30	
1110	A/R RETAINAGE	4,903,477.69	
1140	EMPLOYEE RECEIVABLE	1,973.68	
1141	ACCOUNTS RECEIVABLE-ORTENZIO	184.83	
1156	DUE FROM AFFILIATES	2,197.66	
1157	TOTAL ACCOUNTS RECEIVABLE	17,138,748.16	
1167	INVENTORY:	54,384.97	
1168	INVENTORY	54,384.97	
1192	OTHER CURRENT ASSETS	38,354.36	
1193	COSTS & EARNINGS > BILLINGS	4,158,685.00	
1195	TOTAL CURRENT ASSETS	20,795,315.23	
1196	*LONG TERM ASSETS*		
1200	OFFICER LIFE INSURANCE POLICY	62,094.00	
1205	NOTE RECEIVABLE - VEHICLE	24,621.53	
1300	*FIXED ASSETS*		
1301	OFFICE FURNITURE AND FIXTURES	1,040,346.51	
1302	MACHINERY AND EQUIPMENT	1,181,976.51	
1303	AUTOS AND TRUCKS	1,153,516.12	
1304	SMALL TOOLS	317,193.27	
1305	SHOP/MECHANICAL EQUIPMENT	347,101.45	
1390	TOTAL FIXED ASSETS	4,126,849.39	
1400	ACCUMULATED DEPRECIATION/AMORT:		
1401	ACCUM DEPR - FURNITURE & FIXTURE	716,766.60	
1402	ACCUM DEPR - MACH & EQUIP	396,493.16	
1403	ACCUM DEPR - AUTO & TRUCK	341,643.25	
1404	ACCUM DEPR - SMALL TOOLS	162,519.74	
1405	ACCUM DEPR - SHCP/MECHANICAL	160,079.00	
1488	TOTAL ACCUM DEPR/AMORT	(1,777,501.75)	
1490	NET FIXED ASSETS	2,349,347.64	
1999	TOTAL A S S E T S	23,144,662.87	

EXHIBIT

9

3/13/01/ JmtH

C 7734

L-ROB

ATE: 13-00-1999

CCI CONSTRUCTION CO., INC.
BALANCE SHEETPAGE 2
02-14-2000 12:07

2000	L I A B I L I T I E S		
2005	CURRENT LIABILITIES		
2099	ACCOUNTS PAYABLE:		
2100	ACCOUNTS PAYABLE	2,951,006.31	
2101	SUBCONTRACTOR A/P	6,130,086.78	
2102	A/P RETAINAGE	3,764,423.64	

2120	TOTAL ACCOUNTS PAYABLE		12,845,516.73
2295	ACCRUED PAYROLL TAXES		202,668.00
2415	OTHER CURRENT LIABILITIES		320,629.67
2431	NOTE PAYABLE-ALLFIRST LINE OF	1,200,000.00	
2450	NOTES PAYABLE-CURRENT		3,782,351.64
2480	BILLINGS > COSTS & EARNINGS		4,402,180.00

2490	TOTAL CURRENT LIABILITIES		22,753,346.04
2670	NOTES PAYABLE-LONG TERM		1,387,079.70

2990	TOTAL L I A B I L I T I E S		24,140,425.74
3000	E Q U I T Y		
3110	CAPITAL SURPLUS	9,797.00	
3200	RETAINED EARNINGS	286,513.75	
3210	RETAINED EARNINGS SUB-S CORP.	4,343,092.86	
3275	OTHER ACCUMULATED ADJUSTMENTS	480,647.00	
3300	CURRENT YEAR EARNINGS	(5,115,813.46)	

3800	TOTAL E Q U I T Y		(995,762.87)

3900	TOTAL LIABILITIES AND EQUITY		23,144,662.87
		=====	

L-808
ATE: 13-00-1999

CCI CONSTRUCTION CO., INC.
BALANCE SHEET - SCHEDULE 1

PAGE
02-14-2000 14:07

1003	CASH:	
1010	CASH - DAUPHIN CHECKING	(573,734.41)
1011	CASH - DAUPHIN PAYROLL	(55,522.85)
1013	CASH - FLEX REIMBURSEMENT ACCT	100.00
1016	INVESTMENT IN EPIC	3,000.00
1017	INVESTMENT IN RAFFLES	31,000.00
1020	PETTY CASH	300.00

1040	CASH & INVESTMENTS	(594,857.26)

L-R08

ATE: 13-00-1999

CCI CONSTRUCTION CO., INC.

BALANCE SHEET - SCHEDULE 2

PAGE

02-14-2000 14:

1158	INVENTORY:	
1160	SHEET METAL SHOP INVENTORY	54,384.97

1167	INVENTORY:	54,384.97

C 7737

L-R08
ATE: 13-90-1999

CCI CONSTRUCTION CO., INC.
BALANCE SHEET - SCHEDULE 3

PAGE
02-14-2000 14:0

1150	DUE FROM AFFILIATES	
1153	DUE TO/FROM CUSTODIAL	376.20
1154	DUE TO/FROM RELIANCE	(45.64)
1155	DUE TO/FROM MECHE LAND CO	1,867.10
1156	DUE FROM AFFILIATES	2,197.66

C 7738

L-R08
ATE: 13-00-1999

CCI CONSTRUCTION CO., INC.
BALANCE SHEET - SCHEDULE 6

PAGE 6
02-14-2000 14:07

1169	CURRENT ASSETS:	
1175	PREPAID RENT	2,015.28
1176	SECURITY DEPOSIT - CALIFORNIA	2,015.28
1185	PREPAID TAXES	25,100.00
1190	PREPAID GENERAL EXPENSES	9,223.80
1192	OTHER CURRENT ASSETS	40,552.02

L-ROB
ATE: 13-00-1999CCI CONSTRUCTION CO., INC.
BALANCE SHEET - SCHEDULE 50PAGE 7
02-14-2000 14:07

2190	ACCRUED PAYROLL TAXES:	
2200	ACCRUED FED W/H	57,394.00
2210	ACCRUED FICA W/H	53,592.89
2220	ACCRUED FUTA	4,877.66
2222	ACCRUED SUTA - CAL	196.51
2223	ACCRUED STATE W/H - CAL	6,607.92
2225	ACCRUED STATE W/H - PA	2,570.83
2226	ACCRUED LOCAL W/H - PA	4,817.40
2227	ACCRUED OPT W/H - PA	1,110.00
2228	ACCRUED SUTA - PA	21,787.09
2232	ACCRUED STATE W/H - DEL	36.47
2241	ACCRUED SUTA - W VA.	4,911.32
2243	ACCRUED STATE W/H - WEST VA	5,547.10
2248	ACCRUED SUTA - MD	3,071.83
2249	ACCRUED STATE W/H - MD	9,728.80
2250	ACCRUED SUTA - MO	161.13
2251	ACCRUED STATE W/H - MO	1,341.00
2256	ACCRUED SUTA - OHIO	520.00
2258	ACCRUED STATE W/H - OHIO	485.40
2275	ACCRUED STATE W/H - VA	14,773.69
2276	ACCRUED SUTA - VA	3,282.40
2281	ACCRUED STATE W/H - ILLINOIS	3,130.65
2282	ACCRUED SUTA - IL	2,723.91
2295	ACCRUED PAYROLL TAXES	202,668.00

C 7740

L-R08

ATE: 13-00-1999

CCI CONSTRUCTION CO., INC.
BALANCE SHEET - SCHEDULE 60PAGE 8
02-14-2000 14:07

2296	OTHER CURRENT LIABILITIES	
2301	ACCRUED WORKERS COMP	190,594.18
2307	ACCRUED CAFETERIA DEDUCTIONS (40,624.70)
2310	ACCRUED PAYROLL	130,079.77
2311	ACCRUED UNION FRINGE PAYABLE	186.85
2313	ACCRUED FRINGE FUND ACCOUNT	6,079.45
2315	ACCRUED 401(K) PLAN	2,414.12
2329	ACCRUED ACCOUNTING FEES	31,900.00
2415	OTHER CURRENT LIABILITIES	320,629.67

C 7741

JOHN M. ORTENZIO

DECEMBER 31, 1998

$\Delta \pi$ EXHIBIT 18
Deponent Ortenzio
Date 2-11-02 Rptr. d/c
WWW.DEPOBOOK.COM

C 7957



November 9, 1999

Mr. Craig Schwartz
Vice President
Allfirst Bank
3045 Market Street
Camp Hill, PA 17011

RE: Personal Financial Statement

Dear Craig:

Enclosed is my 1998 personal financial statement. This is sent to you as it relates to the commercial loan note dated November 8, 1999.

Sincerely,

A handwritten signature in dark ink, appearing to read "John M. Ortenzio". The signature is fluid and cursive, with the first name "John" being more prominent.

John M. Ortenzio

Enclosure

CCI CONSTRUCTION CO. INC.

Mailing Address:
P.O. Box 8800
Camp Hill, PA 17001-8800
Telephone: (717) 909-4001 (4224)

Street Address:
2500 Old Gettysburg Road
Camp Hill, PA 17011-7307
Fax: (717) 909-4220

C 7958

JOHN M. ORTENZIO

DECEMBER 31, 1998



John M. Ortenzio
Mechanicsburg, Pennsylvania

We have compiled the statement of financial condition of John M. Ortenzio as of December 31, 1998 in accordance with Statements on Standards for Accounting and Review Services issued by the American Institute of Certified Public Accountants. The statement of financial condition is intended to present the assets of John M. Ortenzio at estimated current values and his liabilities at estimated current amounts.

A compilation is limited to presenting in the form of a financial statement information that is the representation of the individual whose financial statement is presented. We have not audited or reviewed the statement of financial condition and, accordingly, do not express an opinion or other form of assurance on it.

John M. Ortenzio has elected to omit substantially all of the disclosures required by generally accepted accounting principles. If the omitted disclosures were included with the statement of financial condition, they might influence the users' conclusions about the financial condition of John M. Ortenzio. Accordingly, this statement of financial condition is not designed for those who are not informed about these matters.

Brown Schultz Sheridan & Fritz

June 14, 1999

CERTIFIED PUBLIC ACCOUNTANT
AND
BUSINESS ADVISOR

A PROFESSIONAL CORPORATION

1011 MUMMA ROAD
WORMLEYSBURG PA 17041

PO BOX 5786
HARRISBURG, PA 17106-7866
717-761-7177
PA: 800-294-7366
FAX: 717-737-6655

1725 OREGON PIKE
LANCASTER, PA 17601
717-560-8372
PA: 800-294-7366
FAX: 717-560-8712

WEBSITE: WWW.BSSF.COM

JOHN M. ORTENZIO

STATEMENT OF FINANCIAL CONDITION

DECEMBER 31, 1998

(See accountants' compilation report)

ASSETS

Cash	\$ 308,100
Investments:	
Marketable securities	1,157,200
Mutual funds	1,910,300
Salary savings plan	156,600
Partnerships:	
Investment	811,400
Real estate	1,125,600
Other	137,900
Corporations:	
Asset management	19,100
Construction	5,257,600
Finance	105,000
Insurance	180,000
Real estate ownership	3,404,600
Loans receivable:	
Real estate investment partnerships	74,500
Corporations	2,483,600
Corporate office building	440,000
Personal effects	50,000
Residences	855,000
Federal and state income tax refunds	<u>210,300</u>
	<u>\$ 18,686,800</u>

LIABILITIES, ESTIMATED INCOME TAXES AND NET WORTH

Liabilities:	
Divorce settlement agreement	\$ 1,565,200
Loan payable, individual	502,400
Mortgage payable	230,700
State and local income taxes payable	25,500
Estimated income taxes on the differences between estimated current values of assets and their tax bases	536,900
Net worth	<u>15,826,100</u>
	<u>\$ 18,686,800</u>

LAW OFFICES
GEBHARDT & SMITH LLP
NINTH FLOOR
THE WORLD TRADE CENTER
BALTIMORE, MARYLAND 21202-3064

BALTIMORE: (410) 752-5830
WASHINGTON: (301) 470-7468

FACSIMILE
(410) 385-5119

WRITER'S DIRECT DIAL NUMBER:

(410) 385-5100
Writer's E-Mail Address:
lgebh@gebsmith.com

Refer To File No. 18610

February 24, 2000

Via Facsimile and Federal Express
4027 1282 2404

CCI CONSTRUCTION CO., INC.
2500 Old Gettysburg Road
Camp Hill, Pennsylvania 17011-7307

Attn: John M. Ortenzio, President

RE: \$4,000,000 Unsecured Revolving Line Of Credit and
\$2,000,000 Secured Equipment Purchase Line of Credit
Extended By Allfirst Bank To CCI Construction Co., Inc.

Dear Mr. Ortenzio:

This firm represents Allfirst Bank ("Lender"), which has extended to CCI Construction Co., Inc. ("Borrower") (a) a revolving line of credit in the maximum principal amount of \$4,000,000 pursuant to a FILM/Cash Solutions Promissory Note dated March 24, 1999 ("Film Note") and related documents, and (b) a secured equipment purchase line of credit in the stated principal amount of \$2,000,000 pursuant to a Commercial Loan Note ("Commercial Note") and a Security Agreement, both dated November 20, 1998, and related documents. This letter is being sent at the specific request and direction of the Lender.

As a result of the occurrence of various events which are materially adverse to the financial condition of the Borrower, and as a further result of the insolvency of the Borrower, the Lender hereby declares a default under the Commercial Loan Note and under the Security Agreement. In consequence of this declaration of default under the equipment purchase line of credit, the Lender hereby accelerates and declares immediately due and payable all sums presently outstanding and owing under the equipment purchase line of credit.

As a result of the default under the equipment line of credit, the Borrower is, in turn, in default under the cross-default provisions of Section 11 of the FILM Promissory Note, and the Lender hereby declares the default. In consequence of this default the Bank hereby accelerates and demands immediate payment of all sums presently due and owing under the FILM Promissory Note.

Because of the default under the FILM Promissory Note and the Bank's acceleration and demand for immediate payment of the sums due thereunder no further sums will be advanced under the revolving line of credit evidenced by the FILM/Cash Solutions Promissory Note, **effective immediately**. Any checks or other payments items in transit will not be honored by the Lender.

GEBHARDT & SMITH

CCI CONSTRUCTION CO., INC.

February 24, 2000

Page 2

The total sums presently due and outstanding under the equipment purchase line of credit and the revolving line of credit, respectively, are as follows:

Equipment Purchase Line Of Credit

Principal	\$1,244,116.74
Interest through February 23 2000	\$ 5,237.80
Total	<u>\$ 1,249,354.54</u>
Interest per day thereafter: \$231.54	

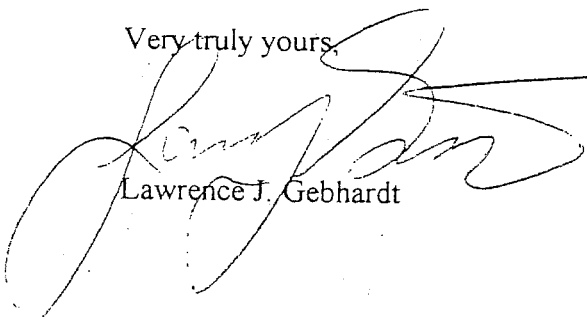
Revolving Line Of Credit

Principal	\$2,601,514.01
Interest through February 23, 2000	\$ 26,524.83
Total	<u>\$2,628,038.84</u>
Interest per day thereafter: \$596.18	

As previously stated, the Lender by this letter is demanding immediate payment in full of all sums due and owing to it by the Borrower under both loans. Unless full payment is made by the Borrower immediately upon receipt of this letter, all remedies available to the Lender under applicable law will be pursued without further notice to the Borrower, including the institution of judgment by confession and the enforcement of the Lender's security interest.

This letter is not intended to be a waiver of any rights, remedies, or recourse available to the Lender, nor an election of remedies arising as a result of the defaults or of any other default which may now or hereafter exist with respect to the revolving line of credit and the equipment line of credit. The collection of interest or acceptance of partial payments (that is, less than the total amount due in accordance with the terms of the debt instruments) by the Lender shall not constitute an extension of the maturity date of the revolving line of credit or equipment line of credit or a waiver of the Lender's acceleration of the indebtedness evidenced by the respective debt instruments or of any other rights under the loan documents.

Very truly yours,


 Lawrence J. Gebhardt

LJG/dls

cc: Gerard L. Elias, SVP
 - ALLFIRST BANK
 Robert E. Chernicoff, Esquire
 - CUNNINGHAM & CHERNICOFF, P.C.

Page: 1 Document Name: untitled

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S150 TRAC  LS/2000 ACCUMULATED TRAN LIST  01-25 16:43:21  01/25
ASSOC 1  APPL CL  BANK 001  BRANCH 0001  PRODUCT DFLT  VIEW 99  PAGE 1
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EFF DT TR SEQ  PRINCIPAL  INTEREST  LOAN BALANCE
PROC DT AC FLD  ORG TRAN AMT

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- 1026991 30 001          622,471.59          .00      1,892,898.95
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                                TIER 1 RT  7.75000
- 1027991 30 001          50,965.93          .00      1,841,933.02
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- 1028991 40 001          56,282.54          .00      1,898,215.56
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- 1029991 40 001          405,853.43          .00      2,304,068.99
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LS0392 This is the first page

CUSTOMER 0102598 LOAN 0001 PART 0000000 DLR 00000 TYPE D* DATE 0000000 PAGE ____

====> ____ PF05=S120 10=STLN* 11=POLN 12=STPS

Date: 1/25/2001 Time: 04:42:26 PM

C 7750

Page: 1 Document Name: untitled

S150 TRAC LS/2000 ACCUMULATED TRAN LIST 01-25 16:43:47 01/25
 ASSOC 1 APPL CL BANK 001 BRANCH 0001 PRODUCT DFLT VIEW 99 PAGE 2
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 EFF DT TR SEQ PRINCIPAL INTEREST LOAN BALANCE
 PROC DT AC FLD ORG TRAN AMT

- 1101991 40 001	367,528.36	.00	2,671,597.35
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		TIER 1 RT 7.75000	
- 1102991 40 001	256,127.74	.00	2,927,725.09
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		TIER 1 RT 7.75000	
- 1103991 40 001	173,975.75	.00	3,101,700.84
1104991	DESC DATA: SWEEP		.00
		TIER 1 RT 7.75000	
- 1104991 40 001	32,626.95	.00	3,134,327.79
1105991	DESC DATA: SWEEP		.00
		TIER 1 RT 7.75000	
- 1105991 30 001	780,576.53	.00	2,353,751.26
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		TIER 1 RT 7.75000	

CUSTOMER 0102598 LOAN 0001 PART 0000000 DLR 00000 TYPE D* DATE 0000000 PAGE ____
 =====> PF05=S120 10=STLN* 11=POLN 12=STPS

Date: 1/25/2001 Time: 04:42:48 PM

C 7751

Page: 1 Document Name: untitled

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S150 TRAC   LS/2000 ACCUMULATED TRAN LIST 01-25 16:43:50 01/25
ASSOC 1  APPL CL  BANK 001  BRANCH 0001  PRODUCT DFLT  VIEW 99  PAGE 3
CCI CONSTRU LN TYPE 3  PYMT MODE 1  MAT DT 12/31/49
  EFF DT TR SEQ          PRINCIPAL          INTEREST          LOAN BALANCE
  PROC DT AC FLD                                ORG TRAN AMT

- 1108991 30 001          1,188,933.15          .00          1,164,818.11
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                                TIER 1 RT  7.75000
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- 1110991 30 001          129,802.94          .00          1,143,955.41
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- 1112991 40 001          196,736.76          .00          1,340,692.17
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- 1115991 40 001          849,262.36          .00          2,189,954.53
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CUSTOMER 0102598 LOAN 0001 PART 0000000 DLR 00000 TYPE D* DATE 0000000 PAGE ____
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Date: 1/25/2001 Time: 04:42:50 PM

C 7752

Page: 1 Document Name: untitled

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 PROC DT AC FLD ORG TRAN AMT

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- 1116991 30 002	1,370,572.38	.00		819,382.15
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CUSTOMER 0102598 LOAN 0001 PART 0000000 DLR 00000 TYPE D* DATE 0000000 PAGE ____
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Date: 1/25/2001 Time: 04:42:52 PM

C 7753

Page: 1 Document Name: untitled

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- 1123991 30 001          143,561.32          .00          1,873,190.64
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                                TIER 1 RT 8.00000
- 1124991 40 001          471,042.28          .00          2,344,232.92
  1126991          DESC DATA: SWEEP                                .00
                                TIER 1 RT 8.00000
- 1126991 40 001          180,113.61          .00          2,524,346.53
  1129991          DESC DATA: SWEEP                                .00
                                TIER 1 RT 8.00000
- 1129991 40 001          180,908.54          .00          2,705,255.07
  1130991          DESC DATA: SWEEP                                .00
                                TIER 1 RT 8.00000

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CUSTOMER 0102598 LOAN 0001 PART 0000000 DLR 00000 TYPE D* DATE 0000000 PAGE ____
 =====> PF05=S120 10=STLN* 11=POLN 12=STPS

Date: 1/25/2001 Time: 04:42:53 PM

C 7754

Page: 1 Document Name: untitled

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S150 TRAC    LS/2000 ACCUMULATED TRAN LIST 01-25 16:43:55 01/25
ASSOC 1  APPL CL  BANK 001  BRANCH 0001  PRODUCT DFLT  VIEW 99  PAGE 6
CCI CONSTRU LN TYPE 3  PYMT MODE 1  MAT DT 12/31/49
EFF DT TR SEQ          PRINCIPAL          INTEREST          LOAN BALANCE
PROC DT AC FLD                                ORG TRAN AMT

- 1130991 30 001          134,260.11          .00          2,570,994.96
  1201991 A          DESC DATA: SWEEP                                .00
                                TIER 1 RT  8.00000
- 1201991 30 001          896,851.65          .00          1,674,143.31
  1202991 A          DESC DATA: SWEEP                                .00
                                TIER 1 RT  8.00000
- 1202991 40 001          505,192.27          .00          2,179,335.58
  1203991          DESC DATA: SWEEP                                .00
                                TIER 1 RT  8.00000
- 1203991 40 001          581,188.02          .00          2,760,523.60
  1206991          DESC DATA: SWEEP                                .00
                                TIER 1 RT  8.00000
- 1206991 30 001          505,758.62          .00          2,254,764.98
  1207991 A          DESC DATA: SWEEP                                .00
                                TIER 1 RT  8.00000

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CUSTOMER 0102598 LOAN 0001 PART 0000000 DLR 00000 TYPE D* DATE 0000000 PAGE ____
 ==> ____ PF05=S120 10=STLN* 11=POLN 12=STPS

Date: 1/25/2001 Time: 04:42:55 PM

C 7755

Page: 1 Document Name: untitled

S150 TRAC LS/2000 ACCUMULATED TRAN LIST 01-25 16:43:56 01/25
 ASSOC 1 APPL CL BANK 001 BRANCH 0001 PRODUCT DFLT VIEW 99 PAGE 7
 CCI CONSTRU LN TYPE 3 PYMT MODE 1 MAT DT 12/31/49
 EFF DT TR SEQ PRINCIPAL INTEREST LOAN BALANCE
 PROC DT AC FLD ORG TRAN AMT

- 1207991 40 001	209,754.70	.00	2,464,519.68
1208991	DESC DATA: SWEEP		.00
		TIER 1 RT 8.00000	
- 1208991 30 001	1,070,151.30	.00	1,394,368.38
1209991 A	DESC DATA: SWEEP		.00
		TIER 1 RT 8.00000	
- 1209991 40 001	306,514.11	.00	1,700,882.49
1210991	DESC DATA: SWEEP		.00
		TIER 1 RT 8.00000	
- 1210991 40 001	229,456.67	.00	1,930,339.16
1213991	DESC DATA: SWEEP		.00
		TIER 1 RT 8.00000	
- 1213991 40 001	329,951.79	.00	2,260,290.95
1214991	DESC DATA: SWEEP		.00
		TIER 1 RT 8.00000	

CUSTOMER 0102598 LOAN 0001 PART 0000000 DLR 00000 TYPE D* DATE 0000000 PAGE ____
 =====> PF05=S120 10=STLN* 11=POLN 12=STPS

Date: 1/25/2001 Time: 04:42:56 PM

C 7756

Page: 1 Document Name: untitled

S150 TRAC LS/2000 ACCUMULATED TRAN LIST 01-25 16:43:59 01/25
 ASSOC 1 APPL CL BANK 001 BRANCH 0001 PRODUCT DFLT VIEW 99 PAGE 8
 CCI CONSTRU LN TYPE 3 PYMT MODE 1 MAT DT 12/31/49
 EFF DT TR SEQ PRINCIPAL INTEREST LOAN BALANCE
 PROC DT AC FLD ORG TRAN AMT

- 1214991 30 001	435,792.55	.00	1,824,498.40
1215991 A	DESC DATA: SWEEP		.00
		TIER 1 RT 8.00000	
- 1215991 30 001	457,495.47	.00	1,367,002.93
1216991 A	DESC DATA: SWEEP		.00
		TIER 1 RT 8.00000	
- 1216991 30 001	18,602.79	.00	1,348,400.14
1217991 A	DESC DATA: SWEEP		.00
		TIER 1 RT 8.00000	
- 1217991 30 001	.00	13,571.16	1,348,400.14
1217991 R *	DESC DATA: *GEN*		13,571.16
OP-ID CL806		TIER 1 RT 8.00000	
- 1217991 40 001	317,523.59	.00	1,665,923.73
1220991	DESC DATA: SWEEP		.00
		TIER 1 RT 8.00000	

CUSTOMER 0102598 LOAN 0001 PART 0000000 DLR 00000 TYPE D* DATE 0000000 PAGE ____
 =====> PF05=S120 10=STLN* 11=POLN 12=STPS

Date: 1/25/2001 Time: 04:42:59 PM

C 7757

Page: 1 Document Name: untitled

S150 TRAC LS/2000 ACCUMULATED TRAN LIST 01-25 16:44:01 01/25
 ASSOC 1 APPL CL BANK 001 BRANCH 0001 PRODUCT DFLT VIEW 99 PAGE 9
 CCI CONSTRU LN TYPE 3 PYMT MODE 1 MAT DT 12/31/49
 EFF DT TR SEQ PRINCIPAL INTEREST LOAN BALANCE
 PROC DT AC FLD ORG TRAN AMT

- 1220991	30	001	492,689.35	.00	1,173,234.38
1221991	A		DESC DATA: SWEEP		.00
			TIER 1 RT	8.00000	
- 1221991	30	001	107,765.04	.00	1,065,469.34
1222991	A		DESC DATA: SWEEP		.00
			TIER 1 RT	8.00000	
- 1222991	30	001	458,328.87	.00	607,140.47
1223991	A		DESC DATA: SWEEP		.00
			TIER 1 RT	8.00000	
- 1223991	40	001	98,268.22	.00	705,408.69
1224991			DESC DATA: SWEEP		.00
			TIER 1 RT	8.00000	
- 1224991	40	001	42,984.27	.00	748,392.96
1227991			DESC DATA: SWEEP		.00
			TIER 1 RT	8.00000	

CUSTOMER 0102598 LOAN 0001 PART 0000000 DLR 00000 TYPE D* DATE 0000000 PAGE ____
 =====> PF05=S120 10=STLN* 11=POLN 12=STPS

Date: 1/25/2001 Time: 04:43:01 PM

C 7758

Page: 1 Document Name: untitled

S150 TRAC LS/2000 ACCUMULATED TRAN LIST 01-25 16:44:02 01/25
 ASSOC 1 APPL CL BANK 001 BRANCH 0001 PRODUCT DFLT VIEW 99 PAGE 10
 CCI CONSTRU LN TYPE 3 PYMT MODE 1 MAT DT 12/31/49
 EFF DT TR SEQ PRINCIPAL INTEREST LOAN BALANCE
 PROC DT AC FLD ORG TRAN AMT

- 1227991	40.001	177,867.20	.00	926,260.16
1228991		DESC DATA: SWEEP		.00
		TIER 1 RT	8.00000	
- 1228991	40.001	341,296.32	.00	1,267,556.48
1229991		DESC DATA: SWEEP		.00
		TIER 1 RT	8.00000	
- 1229991	40.001	359,920.73	.00	1,627,477.21
1230991		DESC DATA: SWEEP		.00
		TIER 1 RT	8.00000	
- 1230991	40.001	837,607.65	.00	2,465,084.86
1231991		DESC DATA: SWEEP		.00
		TIER 1 RT	8.00000	
- 1231991	40.001	827,466.59	.00	3,292,551.45
0101002		DESC DATA: SWEEP		.00
		TIER 1 RT	8.00000	

CUSTOMER 0102598 LOAN 0001 PART 0000000 DLR 00000 TYPE D* DATE 0000000 PAGE ____
 =====> PF05=S120 10=STLN* 11=POLN 12=STPS

Date: 1/25/2001 Time: 04:43:02 PM

C 7759

Page: 1 Document Name: untitled

S150 TRAC LS/2000 ACCUMULATED TRAN LIST 01-25 16:44:04 01/25
 ASSOC 1 APPL CL BANK 001 BRANCH 0001 PRODUCT DFLT VIEW 99 PAGE 11
 CCI CONSTRU LN TYPE 3 PYMT MODE 1 MAT DT 12/31/49
 EFF DT TR SEQ PRINCIPAL INTEREST LOAN BALANCE
 PRCC DT AC FLD ORG TRAN AMT

-	0103002	30	001	222,668.84	.00	3,069,882.61
	0104002	A		DESC DATA: SWEEP		.00
				TIER 1 RT	8.00000	
-	0104002	40	001	175,919.79	.00	3,245,802.40
	0105002			DESC DATA: SWEEP		.00
				TIER 1 RT	8.00000	
-	0105002	30	001	745,764.65	.00	2,500,037.75
	0106002	A		DESC DATA: SWEEP		.00
				TIER 1 RT	8.00000	
-	0106002	40	001	128,879.43	.00	2,628,917.18
	0107002			DESC DATA: SWEEP		.00
				TIER 1 RT	8.00000	
-	0107002	40	001	79,496.30	.00	2,708,413.48
	0110002			DESC DATA: SWEEP		.00
				TIER 1 RT	8.00000	

CUSTOMER 0102598 LOAN 0001 PART 0000000 DLR 00000 TYPE D* DATE 0000000 PAGE ____
 ==> PF05=S120 10=STLN* 11=POLN 12=STPS

Date: 1/25/2001 Time: 04:43:05 PM

C 7760

Page: 1 Document Name: untitled

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S150 TRAC  LS/2000 ACCUMULATED TRAN LIST 01-25 16:44:11 01/25
ASSOC 1  APPL CL  BANK 001  BRANCH 0001  PRODUCT DFLT  VIEW 99  PAGE 12
CCI CONSTRU  LN TYPE 3  PYMT MODE 1  MAT DT 12/31/49
  EFF DT TR SEQ      PRINCIPAL      INTEREST      LOAN BALANCE
  PROC DT AC FLD                                ORG TRAN AMT

- 0110002 30 001      326,855.59      .00      2,381,557.89
  0111002 A      DESC DATA: SWEEP                                .00
                                TIER 1 RT  8.00000
- 0111002 30 001      159,724.87      .00      2,221,833.02
  0112002 A      DESC DATA: SWEEP                                .00
                                TIER 1 RT  8.00000
- 0112002 40 001      174,539.78      .00      2,396,372.80
  0113002      DESC DATA: SWEEP                                .00
                                TIER 1 RT  8.00000
- 0113002 30 001      .00      11,452.37      2,396,372.80
  0114002 *      DESC DATA: *GEN*                                11,452.37
  OP-ID COMNJB      TIER 1 RT  8.00000
- 0113002 30 002      1,291,625.30      .00      1,104,747.50
  0114002 A      DESC DATA: SWEEP                                .00
                                TIER 1 RT  8.00000

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CUSTOMER 0102598 LOAN 0001 PART 0000000 DLR 00000 TYPE D* DATE 0000000 PAGE ____
 ==> ____ PF05=S120 10=STLN* 11=POLN 12=STPS

Date: 1/25/2001 Time: 04:43:14 PM

C 7761

Page: 1 Document Name: untitled

S150 TRAC LS/2000 ACCUMULATED TRAN LIST 01-25 16:44:15 01/25
 ASSOC 1 APPL CL BANK 001 BRANCH 0001 PRODUCT DFLT VIEW 99 PAGE 13
 CCI CONSTRU LN TYPE 3 PYMT MODE 1 MAT DT 12/31/49
 EFF DT TR SEQ PRINCIPAL INTEREST LOAN BALANCE
 PROC DT AC FLD ORG TRAN AMT

-	0114002	40	001	287,001.48	.00	1,391,748.98
	0118002			DESC DATA: SWEEP		.00
				TIER 1 RT	8.00000	
-	0118002	30	001	105,191.73	.00	1,286,557.25
	0119002	A		DESC DATA: SWEEP		.00
				TIER 1 RT	8.00000	
-	0119002	40	001	534,258.91	.00	1,820,816.16
	0120002			DESC DATA: SWEEP		.00
				TIER 1 RT	8.00000	
-	0120002	40	001	1,108,904.84	.00	2,929,721.00
	0121002			DESC DATA: SWEEP		.00
				TIER 1 RT	8.00000	
-	0121002	30	001	139,954.17	.00	2,789,766.83
	0124002	A		DESC DATA: SWEEP		.00
				TIER 1 RT	8.00000	

CUSTOMER 0102598 LOAN 0001 PART 0000000 DLR 00000 TYPE D* DATE 0000000 PAGE ____
 ==> PF05=S120 10=STLN* 11=POLN 12=STPS

Date: 1/25/2001 Time: 04:43:15 PM

C 7762

Page: 1 Document Name: untitled

S150 TRAC LS/2000 ACCUMULATED TRAN LIST 01-25 16:44:16 01/25
 ASSOC 1 APPL CL BANK 001 BRANCH 0001 PRODUCT DFLT VIEW 99 PAGE 14
 CCI CONSTRU LN TYPE 3 PYMT MODE 1 MAT DT 12/31/49
 EFF DT TR SEQ PRINCIPAL INTEREST LOAN BALANCE
 PROC DT AC FLD ORG TRAN AMT

0124002	30	001	500,940.36	.00	2,288,826.47
0125002	A		DESC DATA: SWEEP		.00
			TIER 1 RT	8.00000	
0125002	30	001	183,635.66	.00	2,105,190.81
0126002	A		DESC DATA: SWEEP		.00
			TIER 1 RT	8.00000	
0126002	40	001	54,989.47	.00	2,160,180.28
0127002			DESC DATA: SWEEP		.00
			TIER 1 RT	8.00000	
0127002	40	001	351,614.19	.00	2,511,794.47
0128002			DESC DATA: SWEEP		.00
			TIER 1 RT	8.00000	
0128002	40	001	39,844.75	.00	2,551,639.22
0131002			DESC DATA: SWEEP		.00
			TIER 1 RT	8.00000	

CUSTOMER 0102598 LOAN 0001 PART 0000000 DLR 00000 TYPE D* DATE 0000000 PAGE ____
 ==> PF05=S120 10=STLN* 11=POLN 12=STPS

Date: 1/25/2001 Time: 04:43:17 PM

C 7763

Page: 1 Document Name: untitled

S150 TRAC LS/2000 ACCUMULATED TRAN LIST 01-25 16:44:18 01/25
 ASSOC 1 APPL CL BANK 001 BRANCH 0001 PRODUCT DFLT VIEW 99 PAGE 15
 CCI CONSTRU LN TYPE 3 PYMT MODE 1 MAT DT 12/31/49
 EFF DT TR SEQ PRINCIPAL INTEREST LOAN BALANCE
 PROC DT AC FLD ORG TRAN AMT

- 0131002 30 001	270,953.77	.00	2,280,685.45
0201002 A	DESC DATA: SWEEP		.00
		TIER 1 RT 8.00000	
- 0201002 30 001	1,833,640.45	.00	447,045.00
0202002 A	DESC DATA: SWEEP		.00
		TIER 1 RT 8.00000	
- 0202002 40 001	1,148,974.12	.00	1,596,019.12
0203002	DESC DATA: SWEEP		.00
		TIER 1 RT 8.00000	
- 0203002 30 001	572,299.55	.00	1,023,719.57
0204002 A	DESC DATA: SWEEP		.00
		TIER 1 RT 8.25000	
- 0204002 30 001	109,375.10	.00	914,344.47
0207002 A	DESC DATA: SWEEP		.00
		TIER 1 RT 8.25000	

CUSTOMER 0102598 LOAN 0001 PART 0000000 DLR 00000 TYPE D* DATE 0000000 PAGE ____
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Date: 1/25/2001 Time: 04:43:19 PM

C 7764

Page: 1 Document Name: untitled

S150 TRAC LS/2000 ACCUMULATED TRAN LIST 01-25 15:52:39 01/25
 ASSOC 1 APPL CL BANK 001 BRANCH 0001 PRODUCT DFLT VIEW 99 PAGE 17
 CCI CONSTRU LN TYPE 3 PYMT MODE 1 MAT DT 12/31/49
 EFF DT TR SEQ PRINCIPAL INTEREST LOAN BALANCE
 PROC DT AC FLD ORG TRAN AMT

-	0204002	30	001	109,375.10	.00	914,344.47
	0207002	A		DESC DATA: SWEEP		.00
				TIER 1 RT	8.25000	
-	0207002	40	001	399,049.51	.00	1,313,393.98
	0208002			DESC DATA: SWEEP		.00
				TIER 1 RT	8.25000	
-	0208002	30	001	217,078.14	.00	1,096,315.84
	0209002	A		DESC DATA: SWEEP		.00
				TIER 1 RT	8.25000	
-	0209002	40	001	103,619.93	.00	1,199,935.77
	0210002			DESC DATA: SWEEP		.00
				TIER 1 RT	8.25000	
-	0210002	40	001	32,392.97	.00	1,232,328.74
	0211002			DESC DATA: SWEEP		.00
				TIER 1 RT	8.25000	

CUSTOMER 0102598 LOAN 0001 PART 0000000 DLR 00000 TYPE ** DATE 0000000 PAGE ____
 =====> PF05=S121 10=STLN* 11=POLN 12=STPS

Date: 1/25/2001 Time: 03:51:44 PM

C 7765

Page: 1 Document Name: untitled.

S150 TRAC LS/2000 ACCUMULATED TRAN LIST 01-25 15:52:50 01/25
 ASSOC 1 APPL CL BANK 001 BRANCH 0001 PRODUCT DFLT VIEW 99 PAGE 18
 CCI CONSTRU LN TYPE 3 PYMT MODE 1 MAT DT 12/31/49

EFF DT TR SEQ	PRINCIPAL	INTEREST	LOAN BALANCE
PROC DT AC FLD			ORG TRAN AMT
- 0211002 40 001	1,301,826.10	.00	2,534,154.84
0214002	DESC DATA: SWEEP		.00
		TIER 1 RT 8.25000	
- 0214002 40 001	22,133.21	.00	2,556,288.05
0215002	DESC DATA: SWEEP		.00
		TIER 1 RT 8.25000	
- 0215002 30 001	242,960.14	.00	2,313,327.91
0216002 A	DESC DATA: SWEEP		.00
		TIER 1 RT 8.25000	
- 0216002 30 001	62,060.29	.00	2,251,267.62
0217002 A	DESC DATA: SWEEP		.00
		TIER 1 RT 8.25000	
- 0217002 40 001	152,360.75	.00	2,403,628.37
0218002	DESC DATA: SWEEP		.00
		TIER 1 RT 8.25000	

CUSTOMER 0102598 LOAN 0001 PART 0000000 DLR 00000 TYPE ** DATE 0000000 PAGE ____
 =====> PF05=S121 10=STLN* 11=POLN 12=STPS

Date: 1/25/2001 Time: 03:51:51 PM

C 7766

Page: 1 Document Name: untitled

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S150 TRAC LS/2000 ACCUMULATED TRAN LIST 01-25 15:52:53 01/25
ASSOC 1 APPL CL BANK 001 BRANCH 0001 PRODUCT DFLT VIEW 99 PAGE 19
CCI CONSTRU LN TYPE 3 PYMT MODE 1 MAT DT 12/31/49
EFF DT TR SEQ PRINCIPAL INTEREST LOAN BALANCE
PROC DT AC FLD ORG TRAN AMT

- 0218002 40 001 197,885.64 .00 2,601,514.01
  0222002 DESC DATA: SWEEP .00
    TIER 1 RT 8.25000
- 0222002 30 001 .00 16,658.76 2,601,514.01
  0223002 * DESC DATA: *GEN* 16,658.76
    OP-ID COMNJB TIER 1 RT 8.25000
- 0222002 30 002 510,840.84 .00 2,090,673.17
  0223002 A DESC DATA: SWEEP .00
    TIER 1 RT 8.25000
- 0224002 30 001 638,911.65 .00 1,451,761.52
  0225002 A DESC DATA: .00
    OP-ID COMJKP TIER 1 RT 8.25000
- 0225002 29 001 .00 .00 1,451,761.52
  0225002 209 CHNG DATA: 902240015186
    TIER 1 RT 8.25000

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CUSTOMER 0102598 LOAN 0001 PART 0000000 DLR 00000 TYPE ** DATE 0000000 PAGE ____
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Date: 1/25/2001 Time: 03:51:56 PM

C 7767

Page: 1 Document Name: untitled

S150 TRAC LS/2000 ACCUMULATED TRAN LIST 01-25 15:52:57 01/25
 ASSOC 1 APPL CL BANK 001 BRANCH 0001 PRODUCT DFLT VIEW 99 PAGE 20
 CCI CONSTRU LN TYPE 3 PYMT MODE 1 MAT DT 12/31/99
 EFF DT TR SEQ PRINCIPAL INTEREST LOAN BALANCE
 PROC DT AC FLD ORG TRAN AMT

-	0225002	30	001	1,167,539.00	.00	284,222.52
	0228002	A		DESC DATA:		.00
	OP-ID	COMJKP		TIER 1 RT	8.25000	
-	0306002	29	001	.00	.00	284,222.52
	0306002	107		CHNG DATA: 07003		
	OP-ID	COMMJR		TIER 1 RT	8.25000	
-	0316002	29	001	.00	.00	284,222.52
	0316002	209		CHNG DATA: 003130007003		
				TIER 1 RT	8.25000	
-	0322002	28	001	.00	.00	284,222.52
	0322002			CHNG DATA: N/A-60	11/13 LOAN SWEEP INT	
	OP-ID	COMDCS		TIER 1 RT	8.25000	
-	0322002	29	001	.00	.00	284,222.52
	0322002	033		CHNG DATA: 1		
	OP-ID	COMDCS		TIER 1 RT	8.25000	

CUSTOMER 0102598 LOAN 0001 PART 0000000 DLR 00000 TYPE ** DATE 0000000 PAGE ____
 =====> PF05=S121 10=STLN* 11=POLN 12=STPS

Date: 1/25/2001 Time: 03:51:59 PM

C 7768

CCI Construction Co., Inc.

2500 Old Gettysburg Road
Camp Hill, PA 17011-7307

Phone Number: (717) 909-4224

VIA CERTIFIED MAIL RETURN RECEIPT
REQUESTED AND FIRST CLASS MAIL
C.M.R.R.R. Receipt Number: Z 345 508 393

February 22, 2000

Albermarle-Charlottesville Regional Jail Authority
401 McIntire Road, Room 211
Charlottesville, VA 22902

RE:	Principal:	CCI/Ortenzio Company, Inc.
	Bond No.:	26-0120-12995-98-7
	Obligee/Owner:	Albermarle-Charlottesville Regional Jail Authority
	Description of Project:	Albermarle-Charlottesville Regional Jail

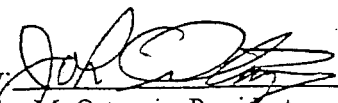
- Dear Sir/Madam:

CCI/Ortenzio Company, Inc., hereby irrevocably requests that all payments due or to become due on account of the above-referenced project due CCI/Ortenzio Company, Inc. be forwarded to United States Fidelity and Guaranty Company d/b/a St. Paul Surety, ATTN: Matthew L. Silverstein, P.O. Box 1138, Baltimore, MD 21203-1138, which company is surety on Performance and Labor and Material Payment bonds given in connection with the aforesaid project.

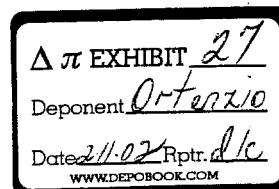
There will be no modification or change in these instructions without the written authorization and consent of United States Fidelity and Guaranty Company d/b/a St. Paul Surety.

Very truly yours,

CCI/Ortenzio Company, Inc.

By: 
John M. Ortenzio, President

cc: United States Fidelity and Guaranty Company, PO Box 1138,
Baltimore, MD 21203-1138 Attention: Matthew L. Silverstein



C 7712

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

ALLFIRST BANK

*

Plaintiff,

*

v.

*

CASE NO.: 1:01-CV-786

JOHN M. ORTENZIO

*

Defendant.

*

AFFIDAVIT OF GERARD L. ELIAS

Gerard L. Elias deposes and states as follows:

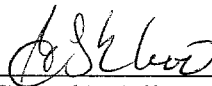
1. I am a Senior Vice President of Allfirst Bank ("Allfirst") and head the Special Credits Division of Allfirst. I have been in the Special Credits Division of Allfirst and its predecessor, The First National Bank of Maryland, for approximately eighteen (18) years and have headed the Special Credits Division for approximately ten (10) years.

2. Because of the nature of my duties for Allfirst, I have become familiar with loan documentation of all kinds, types, and varieties, both as used at Allfirst and as used by other banking institutions. I am familiar with banking custom and practice with respect to loan documentation.

3. Based upon my knowledge and experience in banking and with respect to loan documentation, I believe it would be highly unusual for a loan document, such as a promissory note, to contain a restriction on the source of funds used to repay it. Typically, loan documents contain restrictions on the use of loan proceeds and purposes for which loan proceeds may be used. They do not restrict sources of repayment.

4. Consistent with banking custom and practice, it would be typical for documents evidencing a line of credit to contain a restriction on the use of the proceeds of the line of credit, such as occurred with respect to CCI's \$4,000,000 line of credit. This line of credit restricted its usage for the purpose of financing accounts receivable and work in process in accordance with the terms of the commitment letter.

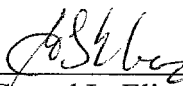
5. Conversely, it would be highly unusual in banking custom and practice for a promissory note, such as that evidencing the \$1,200,000 short-term loan, to contain a provision stating that the promissory note could not be paid from a particular source, such as the proceeds from a line of credit.



Gerard L. Elias

OATH

The undersigned swears under the penalties of perjury that the matters and facts set forth above are true and correct.



Gerard L. Elias

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May 6, 2002

By Hand Delivery

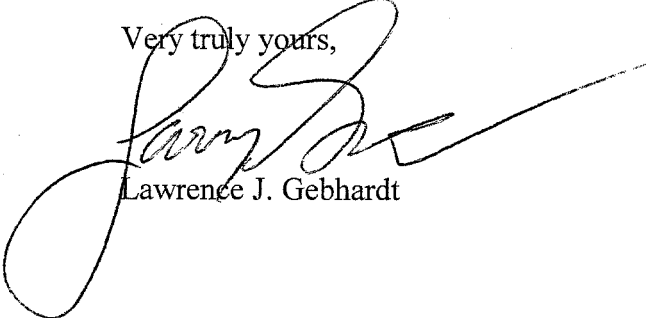
Gerard L. Elias, Sr. Vice President
Allfirst Bank
Special Credits Division, 101-515
25 South Charles Street, 14th Floor
Baltimore, MD 21201

RE: Allfirst Bank v. Ortenzio
Our File No.: 19527

Dear Gerry:

Enclosed is a draft Affidavit for your review. If it appears in order, please give me a call and we will have someone pick it up after you've signed. If you would like to make any revisions, please let me know.

Very truly yours,


Lawrence J. Gebhardt

LJG/cjl
Enclosure

cc: Jamin M. Gibson, Vice President (*By facsimile, w/encl.*)

1
2 IN THE UNITED STATES DISTRICT COURT
3 FOR THE MIDDLE DISTRICT OF PENNSYLVANIA
4 - - -

5 ALLFIRST BANK,

6 Plaintiff

7 vs.

8 JOHN M. ORTENZIO,

9 Defendant

10 : NO. 1:01-CV-786
11 :
12 :
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22 :
23 :
24 :

February 11, 2002
- - -

11 Oral Deposition of JOHN M. ORTENZIO,
12 taken pursuant to notice, was held at Cunningham
13 and Chernicoff, 2320 North 2nd Street, Harrisburg,
14 Pennsylvania 17110, beginning at 1:40 p.m., on the
15 above date, before Donna L. Crossan, an Approved
16 Registered Professional Reporter and Notary Public
17 in and for the Commonwealth of Pennsylvania.
18
19
20
21
22
23
24

ESQUIRE DEPOSITION SERVICES
15th Floor
1880 John F. Kennedy Boulevard
Philadelphia, Pennsylvania 19103
(215) 988-9191

6

STIPULATION

It is hereby stipulated and agreed by and between counsel for the respective parties that reading, signing, sealing, certification, and filing are waived and that all objections, except as to the form of the question, be reserved until the time of trial.

JOHN M. ORTENZIO, after having been first duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. GEBHARDT:

Q Mr. Ortenzio, prior to the filing by CCI Construction of its Chapter 11 bankruptcy petition in May of 2000, what was your position with the company?

A President.

Q Were you also a shareholder?

A Yes.

Q Were you also a member of the Board of Directors?

were, I would say, primarily the more strategic planning of the company, or related more so to that as opposed to -- well, to the strategic planning, overall goals of the company from a work standpoint.

Q So you were not directly involved in the day-to-day tasks of the company?

A Meaning?

Q Well, meaning such things as bidding the jobs or seeing that there were adequate employees on hand, that sort of thing?

A With respect to bidding the jobs, I reviewed the strategies for the bids prior to any bids being submitted, had meetings with individuals in the company to discuss the -- what the type of job, I'll say what the strategy was in terms of obtaining a job, what the nature of the job was, type of work.

Q Would that type of activity, the strategy activity have been consistent with other functions or areas of the company's operation, and for instance, hiring people, deciding what lines of business you were going to go in?

MR. BURKE: Are you still on

7

A Yes.

Q Were there any other members of the Board of Directors?

A No, I don't believe so.

Q How long had you been president of CCI Construction?

A Since its inception.

Q Which was what year?

A Somewhere in 1986, '87.

Q And I take it you were the sole shareholder for the entire period of time?

A Yes.

Q Were you the sole director for the entire period of time?

A Yes.

Q In the year 2000, would you describe what your duties consisted of as president of CCI?

A 2000, I was the president of the company, so, therefore, responsible for the -- ultimately responsible for the company itself.

Q Your day-to-day activities consisted of what kind of tasks?

A Day-to-day my activities in 2000

2000?

MR. GEBHARDT: Yes.

A As far as hiring individuals, if they were -- somebody was going to be in management, I would review the resume. Depending on the position, I might meet with them. Prior to that I would have had a meeting to determine whether or not we had the need for that position, whether replacing somebody or a new position.

BY MR. GEBHARDT:

Q Were your duties for CCI, as you described for the year 2000, consistent over the term of the corporation's existence?

A Starting from when?

Q When it was first created in 1986, 1987.

A No.

Q Describe how they may have changed over the years.

A When the company started there was only myself, probably one other employee to start with and by the time 2000 came around, it was probably myself and probably a couple hundred individuals.

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1 A I don't remember seeing anything
 2 from the bank.
 3 Q Where did you expect the funds to
 4 come from to repay AllFirst in the 90 days that
 5 you anticipated the \$1.2 million loan to be
 6 outstanding at the end of that time?
 7 A Accounts receivable.
 8 Q Collections from the normal
 9 course of business?
 10 A Yes, or from the sale of
 11 equipment or whatever was occurring in that 90
 12 days that would have put money into our account.
 13 Q Did you anticipate the \$4 million
 14 line of credit to have been paid to a zero balance
 15 at that time?
 16 A At what time?
 17 Q At the time the money came in to
 18 pay the million two.
 19 A I don't believe there was any
 20 contemplation -- in other words, it would be a
 21 zero balance?
 22 Q Right.
 23 A Or, in other words -- no, I think
 24 the understanding from the bank was that that was

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1 a revolving line and that would function as it
 2 always had, fluctuate up and down. In fact, I
 3 made it clear at the signing of the note that that
 4 \$1.2 million note would be paid prior to any time
 5 frame, whether it be a renewal.
 6 Q The \$4 million line of credit
 7 commitment letter carried through April 30th and
 8 the one million two carried through March 31, so
 9 there was a disparity in dates, but did you have
 10 any discussions of whether the line of credit
 11 would or would not be brought to a zero balance
 12 before the million two was repaid or not?
 13 A There was no specific requirement
 14 the bank placed on me.
 15 Q I didn't ask you that. I asked
 16 you whether you had discussions with anyone from
 17 the bank on that topic.
 18 A You need to be more specific, I
 19 guess. Just general discussions?
 20 Q Yes. In the course of getting
 21 the million two, when you were discussing that,
 22 did you have any discussions about whether at the
 23 time you repaid the million two, you should have a
 24 zero balance on the \$4 million revolving line of

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1 credit?
 2 A No.
 3 Q Just not discussed?
 4 A The only discussed part was, as I
 5 indicated, was the discussion that they understood
 6 that would be paid off within 90 days and that was
 7 going to be ahead of any payments on the \$4
 8 million line.
 9 Q So, hypothetically, if the \$4
 10 million line had a \$2 million outstanding balance
 11 and a customer sent in a \$1.2 million of accounts
 12 or payables on CCI's billings, you expected to use
 13 the \$1.2 million coming in from the customer to
 14 pay off the million two loan and just leave the
 15 million dollar balance where it was?
 16 MR. BURKE: Could you repeat that
 17 question?
 18 BY MR. GEBHARDT:
 19 Q Let me rephrase it.
 20 Hypothetically, would it have
 21 been your understanding if we assume the \$2
 22 million outstanding on the line of credit and \$1.2
 23 million had come into CCI from a customer, that
 24 you could use that \$1.2 million to pay off the

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1 \$1.2 million loan, without first reducing the \$1.2
 2 million loan, without first reducing the \$2
 3 million hypothetically outstanding under the line
 4 of credit?
 5 MR. BURKE: Objection to form.
 6 A If I chose to, sure. I believe
 7 that was my understanding and I believe that was
 8 the understanding that the bank had.
 9 BY MR. GEBHARDT:
 10 Q On February 11, 2000, the \$1.2
 11 million loan was repaid. Correct?
 12 A Yes.
 13 Q Who made the decision to make
 14 that payment to the bank on February 11, 2000?
 15 A I did.
 16 Q Did you consult with anyone else
 17 in the company about making that payment at that
 18 time?
 19 A As I recall, there were
 20 discussions that I had reviewing the cash flow
 21 situation, where things were on the projects, with
 22 the company, and at the end of the discussion or
 23 those meetings or review or whatever, I decided
 24 that it would be best to pay that note off.

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1 and I said fine, I would come over to see him.
 2 Q So you just said, I'm coming by?
 3 A I said I'm coming over, I wanted
 4 to meet with him and leave my message, and it was
 5 to pay the November note, pay it off.
 6 Q You did --
 7 A I don't recall, unfortunately,
 8 whether I spoke to him directly or to his
 9 assistant, but in either event, I said the same
 10 thing to either one, that I was coming over to see
 11 him, and that's when I went to the bank.
 12 Q You told them you were coming to
 13 pay off the million two loan?
 14 A I believe so. I said I was
 15 coming to see him to pay off the note we had in
 16 November.
 17 Q When you got there, Mr. Schwartz,
 18 as you said, was not present?
 19 A No, he was not.
 20 Q So you never met with him on the
 21 day that you delivered the check?
 22 A Now, I waited for awhile. I
 23 think the woman there said he would be returning
 24 or she thought he would be returning from a

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1 meeting shortly, so I waited.
 2 Q How long did you wait?
 3 A Half hour, 40 minutes maybe,
 4 maybe along those lines.
 5 Q And you didn't take the check
 6 with you when you left, though?
 7 A Well, I started to, but the woman
 8 there asked if she could help me. I told her why
 9 I was there and she said if I wanted to, she could
 10 take care of it.
 11 Q So you gave her the check?
 12 A Yes, I gave her the check.
 13 Q And told her which loan it was
 14 paying off?
 15 A I said it was paying a loan off.
 16 I think she looked it up in her system and asked
 17 me if I wanted a receipt and I said sure, took a
 18 receipt, left a message for Craig to call me when
 19 he got back. She apologized that he wasn't there
 20 or he must have left the meeting and gone to lunch
 21 or something to that effect, but he was still
 22 expected back that day.
 23 Q So solely because the lady asked
 24 to help you is the reason you left the check?

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1 A I believe so. She ask me if she
 2 could help me and I told her why I was there and
 3 she said she could take care of that if I wanted.
 4 Q In practical effect there would
 5 have been no difference in making the payment on
 6 that Friday as opposed to the next Monday?
 7 MR. BURKE: What's the question?
 8 A Is there a question?
 9 ---
 10 (Whereupon the pertinent testimony
 11 was read by the court reporter.)
 12 ---
 13 MR. BURKE: Object to the form.
 14 I don't believe that's a question.
 15 A Probably not, no.
 16 BY MR. GEBHARDT:
 17 Q When you requested the check, you
 18 understood that writing that check would result in
 19 a draw upon the \$4 million line of credit?
 20 A It may or may not have.
 21 Q Did you know that writing the
 22 check would result in a draw on the \$4 million
 23 line of credit?
 24 A Well, depending on how the bank

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1 was accounting for, that could have been the case.
 2 Q You knew at the time the check
 3 was written that CCI had an outstanding balance on
 4 the line of credit, didn't you?
 5 A I think, yes.
 6 Q And you knew that writing that
 7 check would increase the outstanding balance on
 8 the line of credit?
 9 MR. BURKE: Objection, asked and
 10 answered. You can answer it again.
 11 A Well, do you want to ask the
 12 question again or repeat it?
 13 ---
 14 (Whereupon the pertinent
 15 testimony was read by the court reporter.)
 16 ---
 17 A That would depend on whether or
 18 not there were funds still sitting in our account
 19 that would not have been swept by the bank and
 20 their cash management system. So to the extent
 21 there were funds prior to that, then I guess there
 22 would have been a zero impact.
 23 BY MR. GEBHARDT:
 24 Q But you didn't know that.

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1 MR. BURKE: Didn't know what?
 2 BY MR. GEBHARDT:
 3 Q Whether there were any deposits
 4 that had been made that day?
 5 A That were sitting in our account?
 6 Q Yes.
 7 A I know funds had recently come
 8 in, so I believe there were funds sitting in the
 9 account, but I couldn't tell you how much.
 10 Q Did you verify what the
 11 outstanding balance was or what the deposits had
 12 been?
 13 A I verified what our overall
 14 balance was.
 15 Q So then you knew that writing
 16 that check would constitute a draw on the line of
 17 credit?
 18 A No.
 19 MR. BURKE: Objection, asked and
 20 answered. You can answer again.
 21 A It would have drawn a line of
 22 credit only to the extent that the funds had
 23 possibly been swept by the cash management system.
 24 BY MR. GEBHARDT:

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1 Q What time did you go into
 2 AllFirst, in the afternoon, after lunch, wasn't
 3 it?
 4 A Late morning, early afternoon,
 5 somewhere in that time frame.
 6 Q Before you left, you would have
 7 verified the status of the account that had the
 8 line of credit facility?
 9 A Either that or the night before.
 10 Q And based on the information that
 11 you had available to you at the time you wrote the
 12 check, you were of the belief that writing that
 13 check would require a draw on the line of credit?
 14 MR. BURKE: Objection for the
 15 fourth time to the extent that question has been
 16 asked and answered. I'll let my client answer it
 17 one more time.
 18 A Depending on whether or not funds
 19 had been moved from our account into the cash
 20 management system, then there would have been no
 21 impact on the line. To the extent that there was,
 22 then there would have been an impact theoretically
 23 on the line.
 24 BY MR. GEBHARDT:

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1 Q I understand that, how it works.
 2 What I'm asking you, your personal belief, at the
 3 time you wrote the check based on your inquiry as
 4 to the status of the account and so on, your
 5 understanding was that writing that check would
 6 require a draw on the line of credit?
 7 MR. BURKE: I object and I am
 8 going to ask the court reporter to read back the
 9 previous instances where that question has been
 10 asked and answered.
 11 MR. GEBHARDT: The question
 12 stands as it is. You have a question pending,
 13 phrased differently and he can answer this
 14 particular question as to his personal
 15 understanding of the account status.
 16 MR. BURKE: Read back the last
 17 question, please.
 18 ---
 19 (Whereupon the pertinent
 20 testimony was read by the court reporter.)
 21 ---
 22 MR. BURKE: Objection again.
 23 This answer has been asked five times of this
 24 witness and apparently counsel keeps asking the

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1 same question with the hopes of a different
 2 answer. I'll let the witness answer the question
 3 again.
 4 MR. GEBHARDT: Let me phrase it
 5 correctly because the witness has not yet answered
 6 the question.
 7 BY MR. GEBHARDT:
 8 Q You indicated you verified the
 9 status of the account and the line before you
 10 wrote the check. Right?
 11 A I verified that funds had come
 12 into the company from various sources.
 13 Q What funds?
 14 A Off projects, sale of equipment.
 15 Q You knew the amount of funds that
 16 had come in?
 17 A We had taken in some large
 18 deposits. Our deposits had increased as we had
 19 projected them to do so.
 20 Q Did you quantify what those
 21 deposits were before you wrote the check?
 22 A Yes. I knew generally the dollar
 23 amount that we recently had taken in over the
 24 course of the previous couple of days, even that

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1 day.

2 Q It was your view at the time you
3 wrote that check that writing that check would not
4 require a draw on the line of credit?

5 MR. BURKE: Objection, asked and
6 answered. Answer it again.

7 A To the extent that funds had not
8 been swept out of our account by the cash
9 management system, there would have been no impact
10 to the line. To the extent that there was a
11 difference, then by use of the cash management
12 system, funds would have been taken from that.
13 BY MR. GEBHARDT:

14 Q The question still remains, I
15 understand to the extent there were collections,
16 to the extent there was this, this is how it would
17 work. My question to you still is, when you wrote
18 the check and handed it in to AllFirst, did you
19 believe that you were making a borrowing on behalf
20 of CCI under the line of credit or did you think
21 that were sufficient deposits to cover the
22 payment, you personally at the time you wrote it?

23 MR. BURKE: Objection, asked and
24 answered.

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1 BY MR. GEBHARDT:

2 Q I understand what could have
3 occurred and might have occurred and different
4 things, but what did you think was the situation
5 when you wrote the check and handed it in?

6 MR. BURKE: Same objection. Go
7 ahead.

8 A I thought or believed that there
9 were some funds still in our account that had not
10 been swept because there hadn't been time. Those
11 funds were available. That in the tally of it, we
12 had funds available to pay this note off. And so
13 I instructed the check was to be drawn. Whether
14 or not there was impact on the bank's records on
15 the line of credit or not, I can't say. You have
16 to go over the bank's records and see what, if
17 any, impact there would have been.

18 Q In fact, CCI had not collected
19 the cash that it had anticipated collecting when
20 the \$1.2 million was borrowed, isn't that true?

21 MR. BURKE: Objection to form.
22 You can answer.

23 A Say that again.

24 ---

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1 (Whereupon the pertinent
2 testimony was read by the court reporter.)

3 ---

4 A Rephrase that, collected the
5 money.

6 BY MR. GEBHARDT:

7 Q CCI's cash flow problems had
8 increased as of February 2000 beyond what they
9 were in November of 1999, isn't that true?

10 A No, I don't believe that to be
11 the case.

12 Q Isn't it a fact that CCI over the
13 next five months, counting from February, was
14 anticipating substantial cash flow shortfalls?

15 MR. BURKE: What time frame?

16 MR. GEBHARDT: Five-month period
17 counting from February of 2000.

18 MR. BURKE: No, the time frame is
19 when did CCI anticipate?

20 MR. GEBHARDT: From February.

21 A You have to give me the time
22 frame to which to refer to, the date of February
23 11th?

24 BY MR. GEBHARDT:

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1 Q February 11th, you knew that CCI
2 was having cash flow problems on February 11th,
3 didn't you?

4 MR. BURKE: Objection to form.
5 You can answer.

6 A I knew that CCI had cash flow
7 problems, issues when I talked to the bank in
8 November, which we clearly told them about. And I
9 would have to say by February 11th, it appeared as
10 though cash flow problems had improved somewhat,
11 but we still had some issues.

12 BY MR. GEBHARDT:

13 Q You're saying you thought that
14 CCI's cash flow position had improved as of
15 February 11, 2000 beyond what they were in
16 November of 1999?

17 A Well, I would have to look at the
18 report, whatever cash report we may have had in
19 November, and compare it to a cash flow report we
20 might have gotten at the end of January or
21 February, and I could more specifically tell you.

22 Q I'm not asking for the specific
23 numbers. I'm asking whether at the time you wrote
24 the check, was it your understanding that CCI had

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1 a cash flow problem that was worse than it had in
 2 November when the money was borrowed?
 3 A No, I don't believe it was worse.
 4 Q You thought it was better?
 5 A Well, I think it had improved
 6 somewhat.
 7 Q And by somewhat, what do you
 8 mean?
 9 A By problem, what do you mean?
 10 Q By problem, I mean not having
 11 sufficient money to operate the company.
 12 A Well, we had enough money to
 13 operate the company at that point, so I guess by
 14 your definition we didn't have a problem.
 15 Q You understood that over the
 16 succeeding months CCI was not going to have
 17 sufficient funds to operate, didn't you?
 18 A On what date?
 19 Q As of February 11th.
 20 A Not necessarily. I knew that we
 21 had not necessarily cleared all of our problems,
 22 but the problem you're saying, we didn't have
 23 enough money to operate, clearly wasn't the case
 24 on February the 11th.

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1 Q We've established you made the
 2 payment on behalf of CCI on February 11, 2000.
 3 And I think it's also without dispute there was a
 4 meeting held in which you attended and there were
 5 representatives of AllFirst on February the 18th.
 6 Does February the 18th accord with your
 7 recollection?
 8 A On February 18th, I asked for a
 9 meeting with Mr. Schwartz and Mr. -- well, Mr.
 10 Schwartz, probably.
 11 Q And there was a meeting that
 12 actually was held on February the 18th. Correct?
 13 A Yes.
 14 Q That was a Friday?
 15 A Okay.
 16 MR. BURKE: Do you know if it was
 17 a Friday or not?
 18 BY MR. GEBHARDT:
 19 Q If you need a calendar, we can
 20 get one. Was it a Friday?
 21 A Was it a Friday?
 22 Q Yes.
 23 A Okay.
 24 Q You called Mr. Schwartz to ask

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1 for the meeting?
 2 A As I recall.
 3 Q Let's assume, and I'll represent
 4 to you that February 17th was a Friday and, of
 5 course, February 11th was then a Friday, when di
 6 you call Mr. Schwartz to set the meeting up?
 7 MR. BURKE: February 17th was a
 8 Friday or February 18th was a Friday?
 9 MR. GEBHARDT: February 18th is a
 10 Friday and February 11th is a Friday and the
 11 meeting was February the 18th.
 12 BY MR. GEBHARDT:
 13 Q My question is: You had payment
 14 on a Friday and a meeting the succeeding Friday.
 15 When did you call Mr. Schwartz to set up the
 16 meeting of February the 18th?
 17 A I think I called the morning of
 18 the 18th.
 19 Q The morning?
 20 A I think.
 21 Q So the meeting was in the
 22 afternoon?
 23 A I believe so, yes.
 24 Q Now, when you attended that

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1 meeting, who was present?
 2 A Well, let's see, the meeting was
 3 supposed to be with Mr. Schwartz and Mr. Zarcone.
 4 but also in attendance were about five to six
 5 other people from the bank, plus two people on the
 6 speaker phone.
 7 Q I can represent to you that those
 8 were Mr. Elias and Mr. Gibson.
 9 A On the phone?
 10 Q On the phone, yes. You saw Mr.
 11 Schwartz there and you saw Mr. Zarcone there?
 12 A Yes.
 13 Q And the other people who may have
 14 been there you don't recollect?
 15 A Mr. Meyers, Mr. Trout, two or
 16 three others.
 17 Q Now, did you ask for all these
 18 people to be in attendance?
 19 A No.
 20 Q Do you have any understanding of
 21 why all these people attended the meeting?
 22 A No.
 23 Q You called up Mr. Schwartz to say
 24 I would like to meet with you this afternoon and

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1 your testimony that you did not meet with the bank
 2 on February 18, 2000, to discuss the terms of the
 3 revolving line of credit or its renewal or the
 4 loan documents pertaining to it, that was not your
 5 intention when you set the meeting up?
 6 A That's correct.
 7 Q But you nevertheless, based on
 8 the recommendation of your normal counsel, Eckert
 9 Seaman's, the day before the meeting, met with Mr.
 10 Chernicoff and at Mr. Chernicoff's suggestion had
 11 Mr. Chernicoff accompany you to the meeting with
 12 the bank?
 13 MR. BURKE: Objection to the
 14 mischaracterization of the prior testimony.
 15 BY MR. GEBHARDT:
 16 Q Is that what happened?
 17 A The conclusion of my meeting here
 18 at Cunningham Chernicoff, I got ready to leave,
 19 Mr. Chernicoff, I had shown him the documents,
 20 acquired as to where I was going, I told him where
 21 I was going and why I was going there and he
 22 suggested -- asked if I was going by myself and I
 23 said yes and he suggested, if I wanted it might be
 24 good for him to tag along or come along. That was

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1 it. So after thinking about it, I said there is
 2 no harm to be done, and I said fine.
 3 Q You knew prior to walking into
 4 the meeting with the bank that CCI was going to
 5 suffer substantial cash flow shortages over the
 6 next five to six months?
 7 MR. BURKE: Objection to form. You
 8 can answer.
 9 A I had received a recent cash
 10 flow -- worst case cash flow scenario which showed
 11 that we were going to have more serious cash flow
 12 problems in the future months and I took that
 13 information that I had received, I think I
 14 probably received it that morning.
 15 BY MR. GEBHARDT:
 16 Q This was Friday morning also?
 17 A I think it was either Friday
 18 morning or the end of the day Thursday. Received
 19 the information, worst case scenario, but all the
 20 same it was still a scenario and it was -- I felt
 21 the need to inform the bank.
 22 Q Tell them you needed more cash at
 23 that time?
 24 A Basically a projection we were

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1 going to need more cash.
 2 Q And had to come from the bank or
 3 bonding company?
 4 A I didn't ask the bank for it.
 5 Q Did you tell Mr. Schwartz that
 6 you expected CCI to have sustained a \$6 million
 7 loss for 1999?
 8 A At the meeting or phone
 9 conversation?
 10 Q Well, let's talk about the phone
 11 conversation prior to the meeting.
 12 A I don't think so. I don't think
 13 I went into too many facts with Mr. Schwartz. I
 14 told him we were having some problems, I think. I
 15 told him we were going to have significant loss,
 16 certainly a loss for 1999, since we were unable
 17 to -- depending on whether he was able to
 18 recognize a claim, but I didn't go into too much
 19 detail because I wanted to meet with him face to
 20 says.
 21 ---
 22 (Whereupon the document was
 23 marked for identification as Exhibit Number 25.)
 24 ---

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1 BY MR. GEBHARDT:
 2 Q I've handed you Deposition
 3 Exhibit 25 which I will represent to you are notes
 4 taken by Mr. Jamin Gibson, the first page being
 5 notes he made after the initial call to him from
 6 Mr. Schwartz advising of the meeting and the
 7 second page of notes and thereafter from the
 8 meeting and times after the meeting. You'll
 9 notice on the first page somewhere down around the
 10 middle there's a reference to a \$6 million loss
 11 for the year. My question would be, you had never
 12 spoken to Mr. Gibson prior to February 18th?
 13 A That's correct.
 14 Q And if these are notes of Mr.
 15 Gibson's conversation with Mr. Schwartz setting up
 16 the meeting, the \$6 million figure would have had
 17 to come from someplace. Isn't that right?
 18 MR. BURKE: I'm going object to
 19 the form of the question and the use of this
 20 document. Are you asking --
 21 BY MR. GEBHARDT:
 22 Q I'm asking if it refreshes your
 23 recollection as to whether you may have divulged
 24 to Mr. Schwartz in setting up the meeting that you

154

1 expected CCI's 1999 financial statements to show a
2 \$6 million loss.

3 A I don't believe in the phone
4 conversation that I represented to Craig Schwartz
5 any loss figures for 1999. At the meeting that I
6 had I believe I showed him the cash flow
7 projection that showed a \$6 million cash flow
8 shortfall somewhere in the course of the year
9 2000. Also the \$6 million loss, we had already, I
10 guess, somewhat indicated in November that we were
11 looking at possibly a \$2 million loss for 1999.

12 Q Did CCI sustain a \$6 million
13 operating loss for the fiscal year 1999?

14 A I don't believe so.

15 Q Apart from the cash flow
16 statement, did you hand out any other statements
17 at the meeting?

18 A Which meeting are you talking
19 about?

20 Q February 18th.

21 A No.

22 Q Let me ask you, if you would, to
23 look at Deposition Exhibits 22 and 23. Can you
24 identify these documents?

155

1 A One is a balance sheet and one is
2 an income statement.

3 Q And 22 would be the income
4 statement and 23 the balance sheet?

5 A Yes.

6 Q Of CCI?

7 A Yes.

8 Q And these are company internally
9 generated statements?

10 A Yes, they are.

11 Q Did you provide these to AllFirst
12 on February 18th?

13 MR. BURKE: You, meaning CCI or
14 Mr. Ortenzio?

15 MR. GEBHARDT: Mr. Ortenzio was
16 there as a representative of CCI.

17 BY MR. GEBHARDT:

18 Q Did you provide these during the
19 meeting?

20 A I don't believe so. I think the
21 only thing that I provided was the cash flow
22 statement. I believe that there were financial
23 documents sent to them the beginning of the
24 following week, but at the meeting there I don't

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1 think I gave them anything other than what I had,
2 which was the cash flow statement.

3 Q But you do believe that at least
4 after the Friday meeting that you would have sent
5 the income statement and balance sheet that are
6 Exhibits 22 and 23 to AllFirst?

7 A There were financial statements
8 sent from -- I directed the CFO to send them
9 whatever current financial information we had the
10 beginning of the following week. So quite
11 possibly these may have been contained in that.

12 Q Would you look at the second page
13 of Deposition Exhibit 22? Would you agree that
14 this financial statement shows a net loss after
15 taxes of \$6,115,813.48?

16 A That's what it shows.

17 Q This would be for the annual year
18 1999, and actually it's for a 13-month period
19 ending January. So it's a 13-month statement
20 rather than a 12-month statement?

21 A That is what it says at the
22 bottom.

23 Q Is that a correct number?

24 A I couldn't say.

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1 Q Well, did CCI sustain an
2 operating loss in the magnitude of \$6 million for
3 the year 1999?

4 A I don't know.

5 Q Well, you don't think they made a
6 profit, do you?

7 MR. BURKE: The question was:
8 Did they lose 6 million?

9 MR. GEBHARDT: Yes. I said in the
10 magnitude of 6 million. If you want to say 5
11 million 9 or 6 million 1.

12 BY MR. GEBHARDT:

13 Q Did CCI sustain a loss somewhere
14 in the magnitude of the \$6 million indicated?

15 MR. BURKE: Do you know?

16 A I know we would have sustained a
17 loss. Whether it was in the amount of \$6 million,
18 I couldn't say.

19 BY MR. GEBHARDT:

20 Q Was it greater than 3 million?

21 A I really don't know. We never
22 got a chance to really complete our first quarter
23 financials.

24 Q Do you have any reason to believe

Craig J. Schwartz

Page 1

1 IN THE UNITED STATES DISTRICT COURT
 2 FOR THE MIDDLE DISTRICT OF PENNSYLVANIA
 3 ALLFIRST BANK :
 4 Plaintiff :
 5 v. : CA NO. 1:CV-01-0786
 6 JOHN M. ORTENZIO :
 7 Defendant : Pages 1 - 216
 8 -----
 9
 10
 11
 12 Deposition of Craig J. Schwartz
 13 Baltimore, Maryland
 14 Friday, February 15, 2002
 15
 16
 17
 18
 19
 20
 21 Reported by: Kathleen R. Turk, RPR-RMR

Page 3

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 15 Philadelphia, PA 19103-6998
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 18
 19 Also Present:
 20 John M. Ortenzio
 21

Page 2

1
 2
 3
 4
 5 February 15, 2002
 6 10:17 a.m.
 7
 8 Deposition of Craig J. Schwartz held at the offices
 9 of:
 10
 11
 12 Blank, Rome, Comisky & McCauley, L.L.P.
 13 250 West Pratt Street
 14 Eleventh Floor
 15 Baltimore, MD 21201
 16
 17
 18 Pursuant to notice, before Kathleen R. Turk, RPR-RMR,
 19 a Notary Public of the State of Maryland.
 20
 21

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1
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ESQUIRETM
 DEPOSITION SERVICES

Craig J. Schwartz

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1 Q Was there any discussion whether this was
2 going to be a short-term or a long-term facility?
3 A Short-term, I believe.
4 Q What is short-term in relation to long-term?
5 Make sure we're on the same wavelength.
6 A Short-term would be less than a year.
7 Q Okay. Were any documents presented to you
8 by CCI in connection with your granting the 1.2
9 million dollar loan facility?
10 A Yes, I believe they were.
11 Q What documents were provided to you and
12 relied upon?
13 A I don't specifically recall exactly what
14 documents were, were given.
15 Q No -- no general idea as to what documents
16 were provided?
17 A Financial statements, current financial
18 statements of the customer.
19 There may have been others.
20 Q Do you recall that, or are you just assuming
21 it?

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1 A I can recall that, financial statements.
2 Q Anything else?
3 A No.
4 Q Okay. Is the 1.2 million dollar note a bank
5 form?
6 A Yes.
7 Q You'll notice that there are, again, some
8 certain strikeouts, for example, at the bottom of the
9 first page, and there are some inserts in the first
10 and third paragraphs of Page 2.
11 Do you recall how they came about, sir?
12 A There was some question by Mr. Ortenzio
13 that -- apparently, he didn't like the language in the
14 notes.
15 Q And who approved the changes?
16 A I did.
17 Q You did?
18 A Yes.
19 Q Did you need authority of anyone?
20 A I should have had authority, yes.
21 Q Okay. Why don't you look at Schwartz 3 --

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1 I'm sorry -- Schwartz, Schwartz 4 -- I just have a
2 question on Schwartz 3.
3 Let me show you Schwartz 3. Let me know
4 when you are finished looking at it.
5 (Witness reading.)
6 Q I have a very simple question, Mr. Schwartz.
7 If you want to read the whole thing, feel free to.
8 (Witness reading.)
9 A Okay.
10 Q Based on the documents that have been
11 produced, that have been produced by the bank,
12 Schwartz 3 appears to be the latest cash management
13 agreement that was signed by CCI.
14 Do you have any reason to state otherwise?
15 MR. GEBHARDT: Objection.
16 I think that misstates the record. If
17 you look at the note that's in the Complaint on
18 Exhibit -- which is Exhibit A to the Complaint, you'll
19 see a description of the cash management system in
20 effect with that, and that's six years, or five years
21 after this note.

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1 MR. SWICHAR: Okay.
2 Q (By Mr. Swichar) This, then, appears to be
3 the original cash management note, except this may be
4 modified or superseded by anything in any of the notes
5 signed by CCI; is that correct?
6 MR. SWICHAR: I appreciate your
7 correction.
8 A Yes.
9 Q (By Mr. Swichar) Okay. I show you what's
10 been marked for identification as Exhibit Schwartz 4.
11 Take a minute and look at it.
12 (Witness reading.)
13 A Okay.
14 Q Now, according to the last page, this --
15 this Exhibit S-4 reflects that the 1.2 million dollar
16 note was approved not only by you but by
17 Messrs. Myers and Zarcone; is that correct?
18 A That's correct.
19 Q So you did have some approval authority
20 along with the others?
21 A No, I signed this because I have to.

15 (Pages 57 to 60)

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Craig J. Schwartz

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1 Q Okay. Where was cash flow to be deposited
2 at the bank?
3 A Cash flow could have been deposited -- they
4 could have deposited it anywhere they wanted to,
5 didn't necessarily have to be at the bank.
6 Q Well, there are loan documents that say all
7 business deposits are to be deposited in the checking
8 account --
9 A Okay.
10 Q -- is that correct?
11 A I don't know.
12 Q Well, we can review that, but there are
13 documents --
14 MR. GEBHARDT: Maybe you'd like to
15 point out where it says --
16 MR. SWICHAR: Sure.
17 MR. GEBHARDT: -- that it has to be
18 deposited in the checking account.
19 MR. SWICHAR: It says primary deposits
20 will be deposited in the bank.
21 MR. GEBHARDT: Primary is not --

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1 MR. SWICHAR: I know.
2 MR. GEBHARDT: The word primary doesn't
3 mean exclusive, and I understand what was done and how
4 it was done and it said primary, but you're
5 interpreting -- you made a representation that the
6 bank's documents said they couldn't have an account
7 anywhere but the bank, and I don't think there's
8 anything that says that.
9 MR. SWICHAR: Well, let's find the
10 exact language so there's no confusion about that.
11 Do you know off the top of your head
12 where it is?
13 MR. GEBHARDT: No, but I'm sure it says
14 primary, not exclusive.
15 MR. SWICHAR: Okay. It says the
16 primary business deposits will be deposited in the
17 bank's checking account; is that fair, Mr. Gebhardt?
18 MR. GEBHARDT: I think they've
19 indicated that the primary accounts for CCI shall be
20 maintained at the bank.
21 MR. SWICHAR: Okay.

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1 Q (By Mr. Swichar) Where were the bank's
2 profits to be deposited, as far as you're concerned?
3 MR. GEBHARDT: The bank's profits?
4 A The bank's?
5 Q CCI's profits, to be deposited, as far as
6 you're concerned.
7 A In their deposit account.
8 Q Okay. And where was revenues from cash flow
9 to be deposited from CCI?
10 In the bank's checking account as well?
11 A Yes.
12 Q Okay. Did you ever have any specific
13 discussions, if you recall, with Mr. Ortenzio as to
14 when and how the 1.2 million dollar note would be
15 repaid?
16 A I believe there was a letter indicating when
17 it had to be paid by.
18 Q Okay. Anything else?
19 A Not that I can recall.
20 Q I think we're going to come to the letter.
21 I think there's a commitment letter, we'll come to

Page 68

1 that.
2 Did you ever monitor CCI's use of the
3 1.2 million dollar loan funds?
4 A No.
5 Q I show you what has been marked for
6 identification as Exhibit Schwartz 6.
7 A Okay.
8 Q Do you recall how this document came about?
9 Was it prepared by you?
10 A Yes.
11 Q How did it come about?
12 Why was this document prepared?
13 A This was a result of a meeting with CCI,
14 that they were going to need additional funds because
15 of cash flow shortages.
16 Q Was this -- was this S-6 preceded by the
17 1.2 million dollar note, which is dated six days
18 later?
19 A Yes.
20 Q Okay. Was it initially contemplated by the
21 bank that the four million dollar line of credit would

17 (Pages 65 to 68)

Craig J. Schwartz

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1 A Yes.
 2 Q Have you turned that over to Mr. Gebhardt or
 3 someone else in connection with this lawsuit?
 4 A Yes.
 5 MR. SWICHAR: Can I assume it's been
 6 turned over, Larry?
 7 MR. GEBHARDT: You have it all.
 8 MR. SWICHAR: That's all I want to
 9 hear, that's fine.
 10 I mean, the way the documents came, it
 11 was very difficult what came with what.
 12 MR. GEBHARDT: I mean, we, we went
 13 through this, and we went through it with Judge Rambo.
 14 MR. SWICHAR: I'm just asking if we got
 15 it, that's all. That's fine.
 16 MR. GEBHARDT: I said we made those
 17 representations and told you all many times --
 18 MR. SWICHAR: If you told me I have his
 19 personal desk file, then that's good enough for me.
 20 Q (By Mr. Swichar) Would you look at the
 21 Complaint?

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1 Do you have that there, S-2?
 2 Just -- did you review this Complaint before
 3 it was filed?
 4 A I'm not sure. I don't recall if I did or if
 5 I didn't.
 6 Q Did you review it in connection with this
 7 deposition?
 8 A Yes.
 9 Q Okay. Would you look at -- just so I can
 10 clarify things again -- would you look at
 11 Paragraph 7?
 12 And, again, my question is, just so I
 13 understand the mechanism of the cash management
 14 facility, that any checks written from CCI's account
 15 with the bank would increase the four million dollar
 16 line of credit borrowings; is that correct?
 17 A Yes.
 18 Q And so far as you know, CCI had no business
 19 accounts elsewhere?
 20 A As far as I know, they did not.
 21 Q Okay. If -- if CCI wanted to pay a bill

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1 from the accounts receivable that it collects from the
 2 account at Allfirst without drawing on the four
 3 million dollar line of credit, how could it do that,
 4 if it could at all?
 5 A One more time, please.
 6 Q All right. I'm CCI and I want to pay a
 7 bill. I collect my money from the customer, I put it
 8 in the account, and I want to pay another bill -- I
 9 want to pay a bill, but I don't want it to draw on the
 10 line of credit, four million dollar line of credit.
 11 How -- could I do that?
 12 A I don't think so.
 13 Q Is there any document in this world that
 14 prohibits CCI specifically from repaying the
 15 1.2 million dollar note by drawing on the four million
 16 dollar line of credit?
 17 A Is there a document that prohibits them?
 18 Q Yes, specifically.
 19 A Yes, I believe so.
 20 Q That prohibits specifically -- is there a
 21 specific prohibition?

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1 And if there is, we'll find it.
 2 MR. GEBHARDT: You've been provided it.
 3 MR. SWICHAR: Pardon me?
 4 MR. GEBHARDT: You've been provided it.
 5 A I believe it states what the line of credit
 6 can be used for, and that is not a use of a line of
 7 credit.
 8 Q (By Mr. Swichar) All right. Is there any
 9 document that deals with how the, how the loan is to
 10 be repaid specifically?
 11 A No.
 12 Q Okay. Is there any document that
 13 specifically states it cannot be repaid by writing a
 14 check on CCI's business account, checking account?
 15 THE WITNESS: Could you read that back?
 16 (Question was read by the Reporter.)
 17 A Not specifically.
 18 Q (By Mr. Swichar) Okay. Now, the loan
 19 commitment, which I think you've been chomping at the
 20 bit to want to tell me, states that the loan proceeds
 21 were to be used to finance accounts receivable and

36 (Pages 141 to 144)

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1 1.2 million dollars. I said, okay, fine.
 2 I was out on other business when, when he
 3 came in and presented the payment. I was told about
 4 it when I got back. And --
 5 Q What were you told?
 6 A That Mr. Ortenzio came in and paid off the
 7 1.2 million dollar loan.
 8 Q Okay. What happened next?
 9 Did you take any action of any kind?
 10 A Not that I recall.
 11 Q Well, at a certain point, you returned the
 12 note to him, correct?
 13 A No, I did not.
 14 I returned his surety.
 15 Q Okay. You --
 16 A He was -- yes.
 17 Q Okay. You returned the surety, and we'll
 18 come to that in a minute.
 19 Where did you think the -- what funds did
 20 you think were being used to pay off the 1.2, or you
 21 didn't think about it?

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1 A I don't recall thinking about it.
 2 Q Okay. Frankly, you didn't care.
 3 A I didn't say that.
 4 Q I'm asking.
 5 A Sure, I cared.
 6 Q Well, but you didn't ask, did you --
 7 A No.
 8 Q -- the source of the funds?
 9 A No.
 10 Q But you cared?
 11 A Yes.
 12 Q Why did you care?
 13 A In hopes that their cash flow situation was
 14 back where they said it was going to be at that point;
 15 it was going to be great, we didn't have a big problem
 16 to worry about, and things were going well for them.
 17 Q But you never cared enough to call
 18 Mr. Ortenzio to find out the source of the funds?
 19 A I did not call Mr. Ortenzio.
 20 Q All right. I don't think -- I think we
 21 talked about the loan commitment letter, but I don't

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1 think we marked it, so I just want to confirm that
 2 Schwartz 12 is the -- what I'll call the loan
 3 commitment letter because I know you like that letter.
 4 Let's look at it, and at least tell me that
 5 that is, indeed, the loan commitment letter.
 6 A This is a commitment letter for the four
 7 million dollar line of credit.
 8 Q Okay, that's all.
 9 Would you look at Exhibit S-13, which is
 10 your letter to Mr. Ortenzio at CCI dated February 15,
 11 2000?
 12 A Yes.
 13 Q How did you determine that the 1.2 million
 14 dollar loan had been paid in full as of February 11?
 15 A I looked on the computer.
 16 Q And what did the computer show?
 17 A A zero balance.
 18 Q Okay. Did that computer screen deal only
 19 with the 1.2, or would it have looked at, more
 20 specifically, at the cash management account, the
 21 checking account, the four million dollar line of

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1 credit, et cetera, et cetera?
 2 A Just the 1.2.
 3 Q Okay. But you had the other means of
 4 checking to see what the availability was and the
 5 balance was of the four million?
 6 A I had the means.
 7 Q You chose not to go into that?
 8 A I don't recall if I did or if I didn't.
 9 Q Is it possible you did?
 10 A I don't recall.
 11 Q You don't recall either way?
 12 A Correct.
 13 Q Okay. Was this mailed or hand-delivered,
 14 S-13?
 15 A I don't recall.
 16 Q Did you ever inquire the source of payment?
 17 A No.
 18 Q Okay. Now, when Mr. Ortenzio on behalf of
 19 CCI wrote a check and repaid the 1.2 million dollar
 20 note, he was acting on behalf of CCI as an officer; is
 21 that correct?

38 (Pages 149 to 152)

Craig J. Schwartz

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1 Q And do you recollect whether under the terms
2 of the line of credit CCI was required to have the
3 line of credit at a zero balance for thirty
4 consecutive days in a twelve-month period?
5 MR. SWICHAR: Could I hear that back?
6 (Question was read by the Reporter.)
7 MR. SWICHAR: I don't understand the
8 question, but if your own witness does, fine.
9 And if there is a document, why don't
10 you just show it to him?
11 MR. GEBHARDT: Actually, I will
12 withdraw the question because the March 23rd, 1999,
13 commitment does not have that as a requirement, but
14 the preceding one did.
15 So we're operating under what's been
16 designated Schwartz 12, so I will withdraw the
17 question.
18 Q (By Mr. Gebhardt) Now, turning to Schwartz
19 Exhibit 12, which is the commitment letter for the
20 four million dollar revolving line of credit, what
21 were the proceeds of draws on the line of credit to be

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1 I'm just objecting.
2 MR. GEBHARDT: Then object.
3 Q (By Mr. Gebhardt) The line of credit was
4 intended to permit CCI to have funds available pending
5 the receipt of payment from customers on the accounts
6 receivable?
7 A Yes.
8 Q You were asked some questions relating to
9 the payment of the monthly installments on the two
10 million dollar equipment term loan.
11 Do you recollect those?
12 A Yes.
13 Q And I think your testimony was that they
14 were made through the use of the revolving, four
15 million dollar revolving line of credit, right?
16 A Yes.
17 MR. SWICHAR: No, I don't think he said
18 that.
19 I think he said the repayments were
20 made either through checks or automatic, and then we
21 went to the next step, which was the impact of it.

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1 used to do?
2 A Finance work in process and accounts
3 receivable.
4 Q Is repaying in full any fully funded loan or
5 credit facility an authorized use of loan proceeds?
6 MR. SWICHAR: I object to the form of
7 the question.
8 Q You may answer.
9 THE WITNESS: Read it back, please.
10 (Question was read by the Reporter.)
11 MR. SWICHAR: I object to the form,
12 particularly the word authorized.
13 A No.
14 Q (By Mr. Gebhardt) Okay. Now, what exactly
15 are accounts receivable?
16 A Payments from customers of the borrower for
17 services rendered.
18 Q Okay. And this line of credit was intended
19 to provide CCI with --
20 MR. SWICHAR: Are you just leading him
21 down?

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1 Q Was making the monthly installments of
2 principal and interest on the equipment term loan an
3 authorized use of the four million dollar revolving
4 line of credit?
5 A Yes.
6 Q Why is that?
7 A Because a term loan is to be repaid, of
8 course, over a period of time, monthly, and through
9 profits of the company, and those profits are a part
10 of the receivables that they come in. So that line is
11 used because that -- the profits are in -- a part of
12 the accounts receivable, and the line gets paid down
13 that way.
14 (Gerard L. Elias entered the conference
15 room.)
16 Q Had there been no term loan from CCI --
17 no -- excuse me, let me rephrase that.
18 Assume there had been no four million dollar
19 line of credit, what would the source of payment have
20 been for CCI to repay the monthly installments of
21 principal and interest on the two million dollar

45 (Pages 177 to 180)

Craig J. Schwartz

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1 equipment loan?

2 MR. SWICHAR: Objection as to form.

3 A Excess cash flow.

4 Q Where would that come from?

5 A The collection of accounts receivable.

6 Q Okay. Now, when the 1.2 million dollar loan

7 was paid off on February 11, 2000, with a draw on the

8 four million dollar revolving line of credit, I

9 believe the testimony has been that a check was

10 delivered by Mr. Ortenzio to make that payment.

11 Does that accord with your recollection?

12 A Yes.

13 Q Was that payment delivered directly to you?

14 A No.

15 Q Were you at any time ever told by anyone at

16 or about February 11, 2000, that that check

17 represented a draw on the four million dollar

18 revolving line of credit?

19 A No.

20 Q Had you known on or about February 11, 2000,

21 that the check presented by Mr. Ortenzio on behalf of

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1 CCI represented a draw on the four million dollar

2 revolving line of credit, what action, if any, would

3 you have taken?

4 A I would have not honored the check.

5 Q If Mr. Ortenzio had called you prior to

6 bringing the check in and expressly stated that he

7 intended to pay the 1.2 million dollar loan with a

8 draw on the four million dollar revolving line of

9 credit, what would your response to Mr. Ortenzio have

10 been?

11 MR. SWICHAR: Objection to form.

12 A No, don't bother, or why are you paying it

13 off with the line?

14 Q Now, when the --

15 MR. SWICHAR: Do you want the answer to

16 that?

17 Q When the 1.2 million dollar line of

18 credit -- excuse me -- when the 1.2 million dollar

19 loan was discussed, what did Mr. Ortenzio tell you was

20 the reason CCI needed that advance of funds?

21 A They needed the money to keep operating

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1 because the cash flow situation of the company was in

2 a depo -- disposition.

3 Q Did Mr. Ortenzio express at all how long he

4 believed that cash flow problem would continue?

5 A I believe some cash flow projections given

6 to us indicated February, through the end of February.

7 Q And from what source based on your

8 discussions with Mr. Ortenzio in November of 1999 did

9 you anticipate the 1.2 million dollar loan being

10 repaid?

11 A Excess cash flow.

12 Q Okay. And based on Mr. Ortenzio's

13 discussions, did you expect that excess cash flow to

14 put CCI in a positive cash position?

15 A Yes.

16 Q And would you have expected at the time of

17 the 1.2 million --

18 MR. SWICHAR: Object to all these

19 leading questions.

20 MR. GEBHARDT: That's fine.

21 Q (By Mr. Gebhardt) Would you have expected

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1 the 1.2 million dollar loan had it been repaid from

2 the excess cash flow for there to have been a positive

3 balance on the four million dollar revolving line of

4 credit?

5 A I would have expected the line to have a

6 zero balance.

7 Q Now, you were asked --

8 MR. SWICHAR: Wait.

9 Can I hear that question and answer

10 back again?

11 (Record was read by the Reporter.)

12 Q (By Mr. Gebhardt) Now, I believe the

13 documents establish based on the commitment letters

14 that the 1.2 million dollar loan was to be due on

15 March 31, 2000, if not demanded sooner, and that the

16 four million dollar line of credit expired on

17 April 30, 2000.

18 What was your anticipation of what would

19 occur had CCI Construction not had sufficient cash

20 flow to repay the 1.2 million dollar loan by March 31,

21 2000?

46 (Pages 181 to 184)

Craig J. Schwartz

Page 189

1 Q Now, I think you indicated that you did not
2 know when you spoke with Mr. Ortenzio on or about
3 February 11 what the source of the payment might have
4 been that repaid the 1.2 million dollar loan.
5 A That's correct.
6 Q Do you know whether, based on your activity
7 as an account officer, whether Mr. Ortenzio had the
8 personal financial ability to have made that payment?
9 MR. SWICHAR: Objection as to form.
10 A Yes, I believe he did.
11 Q Did you know for a fact whether CCI had
12 accounts with any other banks at the time?
13 A I was not aware of any.
14 Q But did you know one way or the other?
15 A No.
16 Q Did you know whether CCI was into the line
17 of credit at the time the payment was made?
18 MR. SWICHAR: Objection.
19 I don't know what that means, into the
20 line of credit.
21 Q Had a positive balance on the line of credit

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1 at the time the 1.2 million dollar payment was made.
2 Did you know that on February 11?
3 A No, I did not.
4 Q Now, after you learned that the check had
5 come in, did you have any contact with Mr. Ortenzio
6 about the consequences of the payment having been
7 made?
8 In other words, why did you send this letter
9 that's been marked as S-13 to Mr. Ortenzio confirming
10 that the 1.2 million dollar line had about --
11 MR. SWICHAR: Objection as to form; the
12 letter says why he sent it.
13 Q That's 13.
14 Why did you send that letter, S-13?
15 MR. SWICHAR: Objection as to form.
16 It states on the letter why he was
17 sending it.
18 A As a follow-up to Mr. Ortenzio's request to
19 get his surety back because, because the loan was paid
20 in full.
21 Q Okay. Now, that was a request made to you

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1 directly?
2 A Yes.
3 Q And was any sense of urgency expressed by
4 Mr. Ortenzio in the call requesting the return of the
5 suretyship?
6 A Yes, it would have had to be for me to go
7 through the process to get the surety back quicker
8 than the normal course of business.
9 MR. SWICHAR: That's not responsive.
10 I object to the answer, form of the
11 answer.
12 Q Did you take action to get it back quicker
13 than the normal ordinary process?
14 MR. SWICHAR: He testified he had no
15 recollection.
16 Objection.
17 Q You may answer.
18 A Yes, I have -- I did.
19 Q And why did you take that extra effort?
20 A Mr. Ortenzio's request.
21 Q You were also asked a couple questions about

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1 banking custom and practice.
2 Do you recollect that?
3 A Yes.
4 Q Do you know whether banking customs and
5 practice are binding law, enforceable --
6 MR. SWICHAR: Objection to the
7 question.
8 Q -- in courts?
9 A No, I do not.
10 Q Do you know whether banking customs and
11 practices constitute a prohibition upon borrower
12 conduct?
13 A No, I do not.
14 MR. GEBHARDT: No further questions.
15 MR. SWICHAR: Just a couple.
16 EXAMINATION BY COUNSEL FOR THE DEFENDANT
17 BY MR. SWICHAR:
18 Q Mr. Schwartz, you testified that the
19 repayment in full of the 1.2 million dollar loan was
20 not an authorized use of the four million dollar line
21 of credit; is that correct?

48 (Pages 189 to 192)

Craig J. Schwartz

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1 Allfirst charge-off memo?
 2 A No.
 3 Q Do you know the reasons for the bank's
 4 declaring the default on February 24?
 5 A No.
 6 Q Okay. I'll leave this out, save that for
 7 Mr. Elias.
 8 If the bank had collected one million
 9 dollars from its customers and deposited it in a rival
 10 bank, in another bank, and you knew about that, what
 11 would you have done?
 12 MR. GEBHARDT: If the bank had
 13 collected --
 14 Q I'm sorry.
 15 If CCI had collected one million dollars
 16 from its customers in the ordinary course and put it
 17 in another bank and you found out about it, is that a
 18 permissible or impermissible act?
 19 MR. GEBHARDT: Objection.
 20 A I don't think it was -- would -- could be
 21 deemed as permissible or impermissible.

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1 I would have asked why, what the purpose
 2 was.
 3 Q Well, I'm trying to figure out what the
 4 intent of the obligation was where the bank -- where
 5 CCI was required to make its primary business deposits
 6 at Allfirst.
 7 So in that context, if CCI had said, well, I
 8 have a million dollars in checks, I'm going to deposit
 9 that money somewhere else, in another bank, would you
 10 have considered that a breach of that obligation?
 11 A Yes.
 12 Can I rephrase that?
 13 Q Sure.
 14 A I don't think that was a breach.
 15 I would have inquired as to why they were
 16 doing that. I mean, a lot of customers do have
 17 accounts at other banks. Their operating account
 18 where the transactions occur day-to-day --
 19 Q Is there a similar --
 20 A -- is meant by primary deposit account.
 21 Q I'm sorry, what?

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1 A The account where checks that they use to
 2 conduct business --
 3 Q Right.
 4 A -- on a day-to-day basis --
 5 Q Right.
 6 A -- and their primary account would be the
 7 one tied to cash management.
 8 If they have an account at another bank --
 9 customers do do that -- it wouldn't be a breach.
 10 Q Well, suppose they were collections from
 11 customers, and they had an obligation such as the one
 12 that CCI had and they put that money in another bank
 13 and the borrower used it to buy an airplane.
 14 A I would inquire as to why they're doing
 15 that.
 16 Q I'm using it to buy an airplane.
 17 A Why isn't the money coming back into the
 18 business?
 19 Q Well, would you have considered that a
 20 breach?
 21 A A breach --

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1 Q In your view, a permissible act.
 2 MR. GEBHARDT: Objection.
 3 MR. SWICHAR: I'll withdraw the
 4 question. It's a fair objection.
 5 Larry, are you -- I'm asking you
 6 outright, and I almost hope the answer is yes -- are
 7 you planning to use Mr. Schwartz as an expert at the
 8 trial?
 9 I think I'm entitled to know that.
 10 MR. GEBHARDT: Well, as I mentioned,
 11 depending on -- if you plan to have someone take the
 12 stand that says, and testify as an expert, that it is
 13 ordinary banking custom and practice to repay a
 14 guaranteed loan facility with the proceeds of an
 15 unsecured, unguaranteed line of credit in a situation
 16 where the borrower is in default, I may ask
 17 Mr. Schwartz if that's his understanding of banking
 18 custom and practice, but I have no intention of
 19 necessarily calling him in my case in chief as an
 20 expert.
 21 Q (By Mr. Swichar) Mr. Schwartz, are you aware

43 (Pages 169 to 172)

COPY

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

ALLFIRST BANK,
PLAINTIFF
VS
JOHN M. ORTENZIO,
DEFENDANT

:
:
: NO: 1:01-CV-786
:
:

DEPOSITION OF: SHERI PHILLIPS

TAKEN BY: PLAINTIFF

BEFORE: HILLARY M. HAZLETT, REPORTER
NOTARY PUBLIC

DATE: MARCH 13, 2002, 10:43 A.M.

PLACE: ALLFIRST BANK BUILDING
213 MARKET STREET
14TH FLOOR
HARRISBURG, PENNSYLVANIA

APPEARANCES:

GEBHARDT & SMITH
BY: LAWRENCE J. GEBHARDT, ESQUIRE

FOR - PLAINTIFF

BLANK, ROME, COMISKY & McCAULEY, LLP
BY: EDWARD I. SWICHAR, ESQUIRE

FOR - DEFENDANT

HARTMAN, OSBORNE & JOYCE, P.C.
BY: MELINDA S. JOYCE, ESQUIRE

FOR - SHERI PHILLIPS

ALSO PRESENT:

JAMIN M. GIBSON
JOHN M. ORTENZIO



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1 arranging the financing for the company?

2 A He did not have a very big involvement
3 initially. He got very involved when we started
4 having more financial problems at the end; but up
5 until the \$4 million line of credit, I negotiated
6 with the bank.

7 Q And so you would have been the person that
8 negotiated and got into place the \$4 million line of
9 credit?

10 A That's correct.

11 Q And would I be correct in saying that
12 Mr. Ortenzio was not very involved in obtaining the
13 \$4 million line of credit?

14 MS. JOYCE: I object to the form of
15 question, not very involved.

16 BY MR. GEBHARDT:

17 Q His involvement -- his more limited
18 involvement, as you've described it in your previous
19 answer, was pertaining to the \$4 million line of
20 credit also?

21 MR. SWICHAR: I object. Why don't you ask
22 her what was John's --

23 MR. GEBHARDT: All right.

24 BY MR. GEBHARDT:

25 Q What was John Ortenzio's involvement in

1 obtaining the \$4 million line of credit?

2 A He did not actually meet with the bank. I
3 met with the bank. He was aware what was going on
4 and talked to me about what I was doing, what my
5 plans were, what the amount of the loan was. So I
6 had spoken to him about that outside of the meeting
7 with the bank. But when I actually sat down with the
8 bank, he was not in those meetings as I recall.

9 Q What was the purpose to your understanding
10 as the CFO of the \$4 million line of credit?

11 A To cover the work in progress and cover our
12 cash flow needs as the receivables were coming in.

13 MR. GEBHARDT: Will you mark this as the
14 first deposition exhibit?

15 (3/23/1999 letter was marked as Deposition
16 Exhibit No. 1.)

17 BY MR. GEBHARDT:

18 Q I've handed you what has been marked as
19 Deposition Exhibit 1, which purports to be a letter
20 dated March 23rd, 1999, to you from Craig Schwartz on
21 the letterhead of the First National Bank of
22 Maryland, which is the predecessor name for Allfirst
23 Bank. Do you recognize your -- is that your
24 signature on the last page?

25 A Yes, it is.

1 Q Over the course of time you were at CCI,
2 were there times when the company had no borrowings
3 under its line of credit?

4 A Yes, sir.

5 Q In fact, on some of the lines of credit,
6 there was actually a requirement that CCI be out of
7 the line of credit?

8 MR. SWICHAR: Can I hear that again?

9 (The reporter read back the referred-to
10 portion of the record.)

11 MR. SWICHAR: My objection was, Was there a
12 requirement? There's a document. That was my
13 objection.

14 BY MR. GEBHARDT:

15 Q Do you recollect whether there in the lines
16 of credit that were in existence over the period of
17 time you were there from 1991 through 2000 whether
18 there was customarily a feature that to those lines
19 of credit that required CCI to have no borrowings
20 for a 30 consecutive day period?

21 MR. SWICHAR: And I object to the form of
22 the question because I don't know what you mean.

23 MR. GEBHARDT: You may answer.

24 MS. JOYCE: If you understand what he
25 means, if you need clarification, you may request it.

1 quote, if no demand is made, the loan will expire and
2 all borrowings will be due and payable, comma,
3 together with interest thereon, on March 31, 2000 --

4 MS. JOYCE: For the record, you're talking
5 about the second to the last paragraph on page 1 of
6 Exhibit No. 6?

7 MR. GEBHARDT: Yes.

8 BY MR. GEBHARDT:

9 Q -- period, unquote. Was it your
10 understanding that the \$1,200,000 loan was due from
11 CCI on or about March 31, 2000?

12 A Yes.

13 Q In the course of the meetings that you may
14 have had with Mr. Zarcone and Mr. Schwartz on behalf
15 of Allfirst, was there any discussion of where CCI
16 was going to get the money to repay the \$1,200,000
17 loan by March 31, 2000?

18 A As I recall, it was definitely discussed.
19 Whether it was at that meeting or in the paperwork
20 afterwards on the phone, I'm pretty sure it was at
21 that meeting. Yes, we had discussions about how that
22 money would be paid back.

23 Q And what was the substance of those
24 discussions?

25 A That the cash flow that we would have

1 coming in from receivables and projects would
2 generate enough cash to pay this down on a short-term
3 basis.

4 Q In the discussions, was it discussed that
5 CCI would repay the \$1.2 million loan by making a
6 borrowing on the \$4 million line of credit?

7 A No, it was not.

8 Q I note on Exhibit 4 that again there's the
9 reference to the \$4 million Scott Air Force Base
10 receivable. Did that \$4 million receivable have any
11 relationship to a source of funds to repay the \$1.2
12 million loan?

13 A I don't recall if that -- if that was
14 specifically said or not.

15 Q Now, at the time the \$1.2 million loan was
16 being taken out, I take it you had discussions with
17 Mr. Ortenzio about the borrowing?

18 A That's correct.

19 Q And did you and Mr. Ortenzio discuss where
20 CCI would obtain the funds to repay the \$1.2 million
21 when it came due which, according to the commitment
22 letter, was March 31, 2000?

23 A Yes, we did.

24 Q And what was the substance of those
25 discussions?

1 A I had done some cash flow projections. I
2 know John was adamant about having this paid back on
3 a short-term basis. When I gave him the cash flow
4 projections, I had said that if the job profits that
5 are projected hold, we would have the money to pay
6 back this 1.2 million.

7 I also told him that we had seen declining
8 job profit projections over time. I said, I'm not
9 making the projections on the jobs. That's what I've
10 been given from the people in operations. Each month
11 they were decreasing.

12 I said, based on what the most current
13 projections were, if they came in at that amount, we
14 would have the cash flow to pay back the 1.2 million.

15 Q At the time you were having these
16 discussions with Mr. Ortenzio, were there any
17 discussions about using a borrowing under the \$4
18 million line of credit to repay the \$1.2 million
19 guaranteed note?

20 A No, there were not.

21 Q In 1999 and the year 2000, did
22 Mr. Ortenzio, to your knowledge, have any involvement
23 in the repaying of the loans to Allfirst Bank?

24 A Which loans?

25 Q Well, there were three loans. You had the

1 line of credit -- let's start first with the \$4
2 million line of credit. Did he get involved in how
3 that was being paid or repaid at all?

4 A I'm not sure.

5 MS. JOYCE: What time?

6 MR. GEBHARDT: In 1999 and 2000.

7 THE WITNESS: Did he get involved in how it
8 was repaid?

9 BY MR. GEBHARDT:

10 Q Or the process, the repayment process?

11 A No, that was the line of credit. As the
12 cash came in, it was paid down.

13 Q How about the repayment of the equipment
14 loan?

15 A No, he did not.

16 Q Okay. Now, the \$1.2 million loan was
17 repaid by CCI on or about February 11, 2000, by the
18 delivery of a check by Mr. Ortenzio personally to
19 Allfirst.

20 Prior to that date, had you had any
21 discussions with Mr. Ortenzio about the repayment of
22 the \$1.2 million line of credit?

23 A Yes. He had come to me about that.

24 Q And what was the substance of the
25 discussions you had?

1 A He wanted to pay down the \$1.2 million --
2 the \$1.2 million line, he wanted to pay down because
3 he had that personally guaranteed. He had asked me
4 about writing a check out to pay that off from the
5 line of credit, and I refused.

6 Q Why did you refuse?

7 A I didn't think it was in the best interest
8 of the corporation to do that.

9 Q And could you explain why you had those --
10 that you didn't think it was in the best interest of
11 the corporation?

12 A One, I guess I didn't think there was any
13 benefit to doing it. The interest rates were the
14 same in the loans so there was no corporate benefit
15 from paying one -- drawing in one line of credit to
16 pay the other.

17 Two, if we had the extra cash, I would have
18 thought it best suited to pay payroll and accounts
19 payable and subcontractors.

20 Q And at the time the loan was paid in
21 February, the company was experiencing cash flow
22 difficulties?

23 A Yes.

24 Q And did you understand that repaying the
25 \$1.2 million loan with a draw on the \$4 million line

1 of credit would reduce the amount of available cash
2 to the company?

3 A Yes, definitely.

4 Q Okay. Now, in terms of the physical paying
5 of the \$1.2 million loan, you did not write the
6 check?

7 A No, I did not.

8 Q Did you have signature authorities over the
9 checking account?

10 A Yes, I did.

11 Q And so if you had wanted to, you could have
12 written a \$1.2 million check and sent it in to
13 Allfirst?

14 A Yes, I could have.

15 Q Did Mr. Ortenzio have any reaction to your
16 refusal to write the check or make that payment?

17 A Initially when he had asked me about it and
18 I said no, he didn't do anything. Then at a later
19 point in time, he came back to me again and said I
20 know you don't agree with this; but I need to do it.
21 I said, you're the president of the company; but I'm
22 not going to be any part of it.

23 Q Did he at all elaborate on when he said I
24 need to do this, what he was meaning by this?

25 A He personally guaranteed the 1.2 million

1 problems. We need to talk to the bank and bonding
2 company.

3 At that time, we hadn't right then called
4 because it was an issue of whether John would put
5 more money into the company or not. And he had
6 decided that he wanted to pay off the \$1.2 million
7 prior to those discussions with going forward with
8 the bank or the bonding company.

9 Q Now, there was a meeting at Allfirst that
10 Mr. Ortenzio attended with various representatives
11 including Michael Zarcone and Craig Schwartz on
12 February 24, 1999, which was the Friday after
13 February 11, 1999, when the \$1.2 million line --

14 MS. JOYCE: The date is incorrect. I think
15 you might want to just change the year.

16 MR. GEBHARDT: 2000.

17 MS. JOYCE: Why don't we start the question
18 again so the form is correct for the witness?

19 BY MR. GEBHARDT:

20 Q There was a meeting held at Allfirst
21 attended by Mr. Ortenzio and various representatives
22 of Allfirst including Craig Schwartz and Michael
23 Zarcone on February 18, 2000, which was a Friday.
24 That's the Friday after February 11, 2000, when
25 Mr. Ortenzio delivered the check to pay the \$1.2

1 A We had -- our accounts were tied together.
2 We had an account for our payroll, and we had an
3 account for our accounts payable. They were all tied
4 to the accounts payable. They were all tied but
5 handled in a different way.

6 In addition to that, we had a small account
7 for a cafeteria plan for money that was presented for
8 their medical health bills.

9 Q Which accounts were tied into the cash
10 management account, the one where moneys would be
11 swept?

12 A Accounts payable, payroll, and the line
13 itself.

14 Q All three -- all the checking accounts were
15 tied into the cash management?

16 A Yes, they were.

17 Q As far as you know, CCI had no checking
18 accounts elsewhere with another bank?

19 MS. JOYCE: At any time?

20 MR. SWICHAR: 1999/2000, unless I state
21 otherwise.

22 MS. JOYCE: I wasn't clear from your prior
23 questions, so that's fine.

24 THE WITNESS: Without thinking about it --
25 there may have been some other account for something

1 as far as our main transactions for accounts payable
2 and transactions -- they went through Allfirst.

3 BY MR. SWICHAR:

4 Q Were all accounts receivable or revenues
5 deposited in the checking account at Allfirst as far
6 as you know?

7 A Prior to --

8 Q 1999/2000, when money came in by either
9 wire transfer or checks, which I believe you stated
10 were the means by which funds were collected, were
11 they all deposited in the checking account at
12 Allfirst which was related to the cash management
13 facility?

14 A They used to be; but right at the end, John
15 had used another account.

16 Q Where was that account?

17 A I don't know. He had -- it was for a job
18 that wasn't bonded. They had a payment that he used
19 another checking account to pay some of the vendors
20 and one of the deposits into that account.

21 Q Was that at Allfirst or another bank?

22 A I'm sure it was another bank, but I don't
23 know which one.

24 Q Apart from that job -- do you recall which
25 job that was?

1 A It was Old Gettysburg Road.

2 Q Do you know why a separate account was set
3 up for that?

4 A I don't know if the account was just set up
5 for that or if John had a prior account he was using
6 because he had handled that, but he wanted to -- he
7 didn't want the money to be intermingled with what
8 Allfirst and the bonding company -- he didn't want
9 that money in that account that they made draws on.
10 He wanted to use that.

11 Q When you say at the very end he used that,
12 what do you mean?

13 MS. JOYCE: I don't believe that's what the
14 witness said at the very end. I don't believe that's
15 what she was referring to. You can go ahead and
16 clarify.

17 THE WITNESS: After the bank and after the
18 bonding company were aware of what happened and after
19 the bonding company got involved and basically took
20 over running the company during that time period, a
21 check for that one job came in or check or checks --
22 the deposits at that point in time, I think it was
23 one check. John put that into a different account.

24 BY MR. SWICHAR:

25 Q Was that after the bank froze the checking

1 I believe you testified that it was
2 anticipated that CCI would repay the 1.2 million from
3 cash flow that was projected if the projections held
4 true. Is that a fair statement?

5 A That's correct.

6 Q Now, with whom did you have those
7 discussions -- Mr. Ortenzio, the bank, or both?

8 A I definitely had the discussions with John;
9 and as I recall, we had those same discussions with
10 the bank also.

11 Q Am I correct in stating that the
12 projections that CCI was relying upon turned out not
13 to come to fruition?

14 A That's correct.

15 Q When the \$1.2 million note and related
16 surety was signed, did you believe those projections
17 to be capable of being fulfilled based on your
18 financial experience with the company?

19 A As I said, I had concerns; and when I had
20 talked to John about those projections, I said those
21 were based on what operations were projected for the
22 loss or profits on each of those jobs. I had pointed
23 out at that time that those profits and/or losses,
24 they were decreasing throughout the year.

25 Q Well, did you tell the bank at any time

1 A Yes.

2 Q Now, you testified about your discussions
3 that you had with Mr. Ortenzio prior to the bank
4 meeting on February 18, 2000.

5 Am I correct in stating that Mr. Ortenzio
6 advised you that he did intend to go to the bonding
7 companies for financial help until moneys came in
8 from the Scott Air Force Base and other jobs?

9 A Yes, that's correct.

10 Q And there was a discussion about -- do you
11 recall -- if I recall correctly, you testified that
12 -- strike that.

13 Did Mr. Ortenzio ever state to you that
14 bankruptcy was an alternative prior to the meeting
15 with the bank or did he not or you had no
16 recollection?

17 A We discussed bankruptcy prior to that.

18 Q And was it Mr. Ortenzio's primary goal
19 first to go to the bonding companies and ask for
20 financial help until the Scott Air Force Base money
21 came in?

22 A That's what I recall.

23 Q Did Mr. Ortenzio tell you that the bonding
24 companies would have to come up with the money until
25 the moneys came in from the Scott Air Force Base and

1 other jobs?

2 A I do recall that, yes.

3 Q And he said that he expected the bonding
4 companies to cooperate in that fashion?

5 A I don't know that he expected it from them,
6 but he was going to talk to them about that.

7 Q And as of the time you had the meeting with
8 Mr. Ortenzio prior to the February 18 meeting with
9 the bank, wasn't it indicated to you through
10 Mr. Ortenzio that it was his primary intention to
11 keep his company operating by getting funds from the
12 bonding companies until such time as the money from
13 the jobs came in?

14 A We had doubts about whether he wanted to
15 keep the company operating.

16 Q What was his primary goal, to get money?

17 MR. GEBHARDT: Objection. His primary goal
18 for what?

19 BY MR. SWICHAR:

20 Q To keep the company alive?

21 A What's the question?

22 Q Was his primary goal to keep the company
23 alive?

24 MR. GEBHARDT: Objection.

25 MS. JOYCE: If you know what his primary

1 goal was.

2 BY MR. SWICHAR:

3 Q Based on your discussions with him?

4 A At that time, we had serious concerns as to
5 whether he did want to keep the company alive.

6 Q Do you recall on a certain date the bank
7 freezing the bank accounts of CCI?

8 A Yes, I do.

9 Q Do you recall when that occurred?

10 A Without looking back, I think it happened
11 -- actually, we found out on a Wednesday; but I think
12 it was actually frozen on a Tuesday night.

13 If I recall, based on the dates we've been
14 given here, I was thinking that it would be the
15 Wednesday after the 18th meeting.

16 Q A few days after the February 18th meeting?

17 A Yes.

18 Q Was there any warning by the bank that it
19 was going to freeze the accounts?

20 A Not to me.

21 Q What was the nature of the checks -- I'm
22 sorry. As a result of the bank freezing CCI's
23 checking account, were checks returned?

24 A Yes.

25 Q What was the nature of those checks?

1 BY MR. SWICHAR:

2 Q Yes. Well, as of November, was
3 Mr. Schwartz aware that CCI was incurring financial
4 problems?

5 A As of November, they realized we had cash
6 flow difficulties.

7 Q Between November and February 11th, did you
8 have any other discussions with Mr. Schwartz
9 regarding CCI's financial difficulties?

10 A Not that I recall. It would have been
11 right around that time where I would have been giving
12 him the information from the end of the year.

13 Q Would that have been before or after
14 February 11th, 2000?

15 A I don't recall that we gave the information
16 prior to -- if John gave it to them.

17 Q And you don't recall Mr. Schwartz asking
18 you, as CFO, how did CCI come up with this \$1.2
19 million?

20 A No, I didn't.

21 Q Did you suspect that Mr. Schwartz at any
22 time knew the source of repayment?

23 MR. GEBHARDT: Objection.

24 MS. JOYCE: Object, and do not answer.

25 BY MR. SWICHAR:

1 Q And if you look at Exhibit 10, the cash
2 flow statement, my question is: Is the reason the
3 available line of credit is reduced from February's
4 5.2 million to March's \$4 million, the March 31, 2000
5 due date of the \$1.2 million loan?

6 A Yes, it is.

7 Q Now, turn, if you would, to Exhibit 1,
8 which is the commitment letter for the \$4 million
9 line of credit.

10 MR. SWICHAR: I'm sorry. What exhibit?

11 MR. GEBHARDT: Exhibit 1.

12 MR. SWICHAR: Okay.

13 BY MR. GEBHARDT:

14 Q Now, going down to the line, Use of
15 Proceeds, you see it says finance work in progress
16 and accounts receivable. I think you've indicated
17 you understood that to be the purpose of the \$4
18 million line of credit; is that right?

19 A That's correct.

20 Q Now, accounts receivable would mean the
21 accounts that CCI had billed its customers but which
22 its customers had not as yet paid buy were due and
23 owed to CCI?

24 A That's correct.

25 Q So CCI would not have had that money

1 available to it to pay its month-to-month expenses,
2 right?

3 A That's correct.

4 Q And the line of credit would be used to
5 fill in the gap until the actual customers made their
6 payments to CCI?

7 A That's right.

8 Q And while were talking about finance work
9 in progress, what that means is the normal monthly
10 expenses of CCI in doing its construction work?

11 A That's correct.

12 Q Now, as a chief financial officer, would it
13 be consistent with your understanding of a line of
14 credit that's used to finance accounts receivable and
15 work in progress to use the line to make the normal
16 monthly interest payments on borrowings?

17 A Yes, it would.

18 Q Would it also be consistent with that
19 purpose to make the normal monthly principal
20 amortizations on loans that required monthly
21 principal payments?

22 A Yes, it would.

23 Q But it would be inconsistent to completely
24 prepay all principal and interest on a loan that was
25 not yet due?

1 A I agree with that. That's correct.

2 Q Now, if you look at the second page,
3 numbered paragraph 8, there's a statement there that
4 advance --

5 MR. SWICHAR: What exhibit?

6 MR. GEBHARDT: Exhibit 1.

7 BY MR. GEBHARDT:

8 Q Exhibit 1, numbered paragraph 8 on page 2,
9 it says, Advances not to exceed 85 percent of
10 qualified accounts receivable less than 90 days past
11 due excluding retainages. Do you see that?

12 A Yes. It says 80 percent.

13 Q Paragraph 8, Advances not to exceed 80
14 percent of qualified accounts receivable less than 90
15 days past due, comma, excluding retainages, right?

16 A That's right.

17 Q Now, what that means is that's a limit on
18 the amount of money that CCI could borrow under the
19 line of credit; is that right?

20 A That's correct.

21 Q So even though it was a \$4 million line of
22 credit, if CCI only had \$2 million of accounts
23 receivable that were less than 90 days past due, CCI
24 could not borrow \$4 million?

25 A That's correct.

1 Q In your view, was the borrowing authorized
2 under the terms of the line of credit?

3 MR. SWICHAR: Objection to form. Objection
4 to the word authorized. I don't think it's within
5 her promise to interpret the documents.

6 MS. JOYCE: I think you're asking her for
7 an expert witness answer.

8 BY MR. GEBHARDT:

9 Q Let me just say, based on your
10 understanding as the person who negotiated and
11 executed the \$4 million loan and loan documents, was
12 the draw of \$1.2 million to pay the personally
13 guaranteed loan and authorized borrow?

14 MR. SWICHAR: Objection to form. Same
15 reason.

16 BY MR. GEBHARDT:

17 Q Permitted under the terms of the loan?

18 MR. SWICHAR: Objection to form. You're
19 asking her to interpret legal documents.

20 MR. GEBHARDT: All right.

21 BY MR. GEBHARDT:

22 Q You may answer.

23 A No, I don't.

24 MR. GEBHARDT: All right. That's it.

25 MR. SWICHAR: No, it's not it. I have a

1 Q And you were reducing monthly the principal
2 that was owed on the \$2 million equipment note; is
3 that correct?

4 A That's correct.

5 Q And you didn't see any problem or see any
6 inconsistency with the loan documents in using the \$4
7 million line of credit to pay monthly -- to pay down
8 monthly the principal owed on the \$2 million
9 equipment note?

10 A I actually had talked to Craig Schwartz
11 about that. He said that -- we had a discussion
12 about that at one point because we had a payment that
13 went in late because of something that happened in
14 accounts payable.

15 Craig had called and said the payment
16 wasn't paid. After I found out about it, I said
17 okay. We talked about that; and I said, well, it's
18 actually drawing of the line to pay this down. But
19 no, I did not see problems with and knew that is what
20 was happening.

21 Q And in your discussions with Craig Schwartz
22 did he indicate that he had a problem in the way that
23 the equipment note was being repaid -- the equipment
24 note payments were being made?

25 A Monthly payments, no.

Gerard L. Elias

Page 1

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

3 ALLFIRST BANK :

4 Plaintiff :

5 v. : CA NO. 1:CV-01-0786

6 JOHN M. ORTENZIO :

7 Defendant : Pages 1 - 31

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12 Deposition of Gerard L. Elias

13 Baltimore, Maryland

14 Friday, February 15, 2002

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21 Reported by: Kathleen R. Turk, RPR-RMR

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Gerard L. Elias

Page 17

1 A I don't recall.
 2 Q Did they ask for more money?
 3 A I don't recall.
 4 Q Do you recall telling Mr. Ortenzio that the
 5 bank wanted its fucking money or you were leaving?
 6 A I don't recall.
 7 Q Is it possible you would have said that?
 8 A Possible.
 9 MR. SWICHAR: Excuse me.
 10 Q (By Mr. Swichar) Do you recall when the
 11 decision was made -- did you -- were you involved in
 12 the decision to freeze CCI's bank accounts?
 13 A Yes.
 14 Q When was that decision made?
 15 A I believe it was Wednesday, the 23rd.
 16 Q And did you make that decision yourself?
 17 A I think there were probably a few people
 18 involved in the decision --
 19 Q Who else?
 20 A -- but I was in the group.
 21 Q Who else?

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1 A Well, I think probably Mr. Zarcone was
 2 involved. I can't recall specifically.
 3 Q Did the bank begin to freeze CCI accounts on
 4 the 23rd?
 5 A I think that was the date.
 6 Q That was prior to the declaration of
 7 default?
 8 A No.
 9 Q Well, the declaration of default -- letter,
 10 at least -- is dated the 24th.
 11 A Correct.
 12 Q When was the declaration of default, and how
 13 was that conveyed to CCI?
 14 A I believe it was conveyed that date when we
 15 became aware of the fact that the checks were
 16 continuing to --
 17 Q What date is that?
 18 A The 23rd.
 19 Q The 23rd?
 20 A -- draw down on the line.
 21 I believe we contacted Mr. Ortenzio to make

Page 19

1 inquiry as to why that was occurring and asked for
 2 some additional support if we were to be expected to
 3 continue to, to fund.
 4 Q Okay. So on the 23rd, you did ask for
 5 additional support?
 6 A Yes.
 7 Q And what kind of support did you ask for?
 8 A Guarantees, additional collateral, some
 9 support payment.
 10 Q What additional guarantees did you request?
 11 Guarantee the four million dollar line?
 12 A Yes.
 13 Q And what other decision?
 14 A Additional collateral.
 15 Q As, for example?
 16 A Oh, just whatever additional collateral
 17 might be worthwhile.
 18 Q So on the 23rd, I assume Mr. Ortenzio said
 19 no.
 20 A Correct.
 21 Q And at that point, you froze the accounts?

Page 20

1 A Correct.
 2 Q Instantly, on the 23rd?
 3 A I believe so.
 4 Q And you made the decision to bounce CCI's
 5 checks on the 23rd as well?
 6 A Correct.
 7 Q And that began on the 23rd?
 8 A I believe that's the date, yes.
 9 Q And that was prior to any written
 10 declaration of default?
 11 A Correct.
 12 Q Was it a situation where the bank also
 13 decided to reverse certain payments on checks that had
 14 already just cleared?
 15 A I don't recall that.
 16 Q Did you review any documents prior to your
 17 deciding to declare CCI in default?
 18 A Sure.
 19 Q Which documents did you review?
 20 A The loan documents.
 21 Q Pardon me?

5 (Pages 17 to 20)

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Gerard L. Elias

Page 21

1 A The loan documents.
 2 Q The four million dollar line of credit note?
 3 A All of the loan documents.
 4 Q Okay. The 1.2 million dollar note, the
 5 equipment note, are those the documents?
 6 A I don't -- I don't know that I reviewed the
 7 1.2 million dollar note because I don't know that I
 8 was aware of it.
 9 Q Did you determine on the 23rd that there had
 10 been a material adverse change in CCI's financials?
 11 A Well, certainly by that time, but actually
 12 prior to that time.
 13 Q Okay. Is there any written analysis of that
 14 anywhere?
 15 A No.
 16 Q What documents did you review and rely upon
 17 in determining that there had been a material adverse
 18 change?
 19 A Company's financial position, statement.
 20 Q Who gave you those documents?
 21 A I received them probably from Craig Schwartz

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1 or contained in the file.
 2 I mean, I don't know exactly who handed them
 3 to me.
 4 Q Let me show you exhibit S-14.
 5 I'm going to make this easier. There's one
 6 over there, I think. Is that it, the charge-off
 7 memorandum?
 8 A Yes.
 9 Q Just as a matter of curiosity, Mr. Elias,
 10 under the section Reason for Charge-Off Comments, the
 11 last sentence on the first paragraph -- and I see
 12 you're squinting; I don't make the print this small,
 13 that's not me, that's your bank -- it states that due
 14 in large part to the information shared on
 15 February 18th, the bank demanded payment on
 16 February 24th.
 17 A Wait a minute, I'm not reading the same
 18 document.
 19 Due in large part -- oh, all right, the
 20 first paragraph, sorry.
 21 Q Do you see that?

Page 23

1 A Due in large part --
 2 Q Right.
 3 My question is, what was the small part?
 4 A I don't understand that question.
 5 Q Well, the memo -- I don't understand it,
 6 either, but the memo says that due in large part to
 7 what occurred on the 18th, the bank called the loan.
 8 A Correct.
 9 Q It means there would be another part to
 10 this --
 11 A No.
 12 Q -- that played a role in the bank declaring
 13 the loan in default.
 14 A That's it.
 15 Q If there's a large part somewhere, there's a
 16 small part elsewhere.
 17 A No.
 18 Q There was no small part? It was all --
 19 A That's, that's -- that's someone's term, due
 20 in large part. People say that all the time, due in
 21 large part to. That doesn't mean that there

Page 24

1 necessarily had to be something else.
 2 Q I'm not suggesting that. I'm only asking if
 3 there was a smaller part that played a role in the
 4 bank's declaring the note in default.
 5 A No.
 6 Q When did --
 7 A I would ask you to ask the question again
 8 because I don't understand it.
 9 Q When did the bank -- when did you first
 10 learn that CCI had repaid the 1.2 million dollar note
 11 from the four million dollar line of credit?
 12 A I don't recall, but it was well after the
 13 events of the, of the time that we're talking about.
 14 Q Was it before or after the declaration of
 15 default --
 16 A Well after.
 17 Q -- on the 23rd or 24th?
 18 A Well after.
 19 Q How did you determine or find out how that
 20 occurred?
 21 A I believe that Mr. Gibson advised me upon

6 (Pages 21 to 24)